

CHAPTER 15 SURPLUS LINES INSURANCE

REPEAL OF

**SUBCHAPTER A. GENERAL REGULATION OF SURPLUS LINES INSURANCE
28 TAC §§15.1-15.25**

**SUBCHAPTER B. SURPLUS LINES STAMPING OFFICE OF TEXAS
28 TAC §15.101**

ADOPTION OF

**SUBCHAPTER A. GENERAL PROVISIONS
28 TAC §§15.1 - 15.9**

**SUBCHAPTER B. SURPLUS LINES AGENTS
28 TAC §§15.101 - 15.115**

**SUBCHAPTER C. SURPLUS LINES STAMPING OFFICE PLAN OF OPERATION
28 TAC §15.201**

**SUBCHAPTER D. SURPLUS LINES INSURERS
28 TAC §15.301**

INTRODUCTION. The Commissioner of Insurance adopts the repeal of 28 TAC Chapter 15, Subchapter A, §§15.1 – 15.25, and Subchapter B, §15.101. The Commissioner also adopts new 28 TAC Chapter 15, Subchapter A, §§15.1 – 15.9, Subchapter B, §§15.101 – 15.115, Subchapter C, §15.201, and Subchapter D, §15.301. The repealed and new sections relate to surplus lines insurance. The text of the proposed repeal and the proposed new rules was published in the June 22, 2018, issue of the *Texas Register* (43 *TexReg* 3957).

TDI adopts the repeal of §§15.1 – 15.25, and 15.101 without changes.

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TDI adopts new sections §§15.4, 15.6, 15.7, 15.103, 15.108, 15.109 and 15.201 without changes to the proposed text.

TDI adopts new §§15.1, 15.2, 15.3, 15.5, 15.8, 15.9, 15.101, 15.102, 15.104, 15.105 – 15.107, 15.110 – 15.114, 15.115, and 15.301 with nonsubstantive changes to the proposed text. The nonsubstantive changes were made in response comments.

The changes to the adopted sections do not change issues raised in the proposal, introduce new subject matter, incur costs, or affect persons other than those previously on notice.

A public hearing was held to consider the proposed rules on July 10, 2018, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe St., Austin, Texas 78701. The public comment period closed on July 23, 2018.

Under Government Code §2001.033(a)(1), TDI's reasoned justification for the repeal of existing Chapter 15 and the adoption of new Chapter 15 is set out in this order.

REASONED JUSTIFICATION.

The repeal of existing Chapter 15 and the adoption of new Chapter 15 are necessary to implement legislation that amended Insurance Code Chapter 981, concerning surplus lines insurance, and to update and reorganize the rules. Specifically, the repeal and new sections implement: Senate Bill 951, 83rd Legislature, Regular Session (2013); House Bill 1405, 83rd Legislature, Regular Session (2013); SB 697, 83rd Legislature, Regular Session (2013); HB 1559, 85th Legislature, Regular Session (2017); and HB 2492, 85th Legislature, Regular Session (2017).

SB 951 amended Insurance Code Chapter 981 to comply with the Non-admitted and Reinsurance Reform Act (NRRA). The NRRA is a section of the Dodd-Frank Act that

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governs surplus lines insurance. SB 951 clarified that Chapter 981 applies to surplus lines insurance if the insured's home state is Texas, provides applicable definitions, exempts commercial purchasers, and states that agreements regarding uniform surplus lines insurance standards made between Texas and other states are binding. The repeal of sections conflicting with SB 951 and new §§15.1, 15.4, 15.110, 15.111, and 15.301 address requirements of SB 951.

HB 1405 amended Insurance Code Chapters 225 and 981 and relates to the collection of surplus lines insurance premium taxes for insurance placed with a managing underwriter. HB 1405 clarifies that in instances where more than one individual with a surplus lines license is involved in a transaction, the parties may enter into a written agreement at or before the time coverage is bound under the policy stating which party is responsible for the typical agent's duties. HB 1405 requires the surplus lines agent and the managing underwriter maintain a record of the agreement with each policy to which the agreement applies. New §15.108 addresses requirements of HB 1405.

SB 697 amended Insurance Code Chapter 981 to allow non-resident surplus lines agents to do business in Texas without a property and casualty license, provided they comply with their domiciliary state's licensing requirements. To qualify, the non-resident surplus agent must also have a professional relationship with a licensed property and casualty agent in Texas who first conducts a search for available coverage from an admitted insurer in Texas before placing insurance through the non-resident surplus lines agent. The non-resident surplus lines agent must also supply sufficient information to the Commissioner demonstrating that the agent's home state does not require property and casualty licensure to obtain a surplus lines license. New §15.4 and §15.5 address requirements of HB 697.

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HB 1559 amended Chapter 981 to authorize a surplus lines agent to offer coverage to an industrial insured that employs or retains a qualified risk manager and either pays annual premiums of at least \$25,000 or employs at least 25 employees, without first satisfying Insurance Code §981.004(a)(1). Insurance Code §981.004(a)(1) addresses whether the full amount of required insurance can be obtained, after a diligent effort, from an insurer authorized to write and writing that kind and class of insurance in Texas. The bill also requires that the surplus lines agent keep certain records related to the insured's qualifications as an industrial insured. New §15.110 and §15.112 address requirements of HB 1559.

HB 2492 amended Chapter 981 to authorize a property and casualty insurance company organized under statutory provisions of the Insurance Code that has capital and surplus in an amount of at least \$15 million dollars to apply to TDI for designation as a domestic surplus lines insurer. New §15.5 and §15.301 address requirements of HB 2492.

TDI reviewed all sections of repealed Chapter 15 to assess whether the reasons for initially adopting the sections continue to exist under Government Code §2001.039. TDI determined that in most, but not all cases, the reasons for initially adopting the sections continue to exist. In those cases, TDI is repealing the sections, but adopting similar provisions in new sections, with differences in text necessary for consistency with current statutes and updated language. Following its review, the department determined that the reasons for adopting §§15.4, 15.6, 15.8, 15.18 – 15.20, and 15.101 no longer exist, so TDI did not include provisions similar to those sections in the new chapter.

In addition to statutory reasons and rule review, TDI adopted the repeal of Chapter 15 to better organize provisions concerning surplus lines insurance. Repealed Chapter 15 had two subchapters: subchapter A contained 25 sections relating to multiple topics, and

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subchapter B contained one long section relating to the Surplus Lines Stamping Office's plan of operation. Repealing these two subchapters and adopting four new subchapters improves the chapter's organization by grouping sections by subject. It will also improve compliance, because surplus lines agents, insurers, and the Surplus Lines Stamping Office of Texas (stamping office) will be able to easily identify requirements applicable to them.

Subchapter A, relating to general regulation of surplus lines insurance and consisting of §§15.1 – 15.25, is repealed because the subchapter became too long and difficult to navigate and contained too many subjects. Some of the repealed text is adopted as new text. The adoption order identifies whether an adopted section contains text based on text in a repealed section.

Subchapter B, relating to the stamping office and consisting of §15.101, is repealed so that the plan of operation can be more efficiently amended. Insurance Code §981.153 requires the Commissioner to approve by order the plan of operation, but it does not require the text of the plan be a rule. Procedures to amend the plan of operation are included in new §15.201. Section 15.201 allows for public comment and requires approval of amendments to the plan of operation by Commissioner order.

Under Insurance Code §981.153, the stamping office operates under a plan of operation approved by the Commissioner. A plan of operation like the repealed plan of operation in §15.101 will be approved by Commissioner order at the same time the repeal of §15.101 is adopted and will be posted on the stamping office's website. If the plan of operation is amended, the prior version will be maintained as required under the Texas State Records Retention Schedule in 13 TAC Chapter 6.

Also included in the repeal of Chapter 15 is the repeal of tax rules related to the calculation or allocation of premium taxes, because taxes are under the scope of the Texas

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Comptroller of Public Accounts. Repealing these types of tax rules in Chapter 15 avoids potential conflicts between TDI's and the comptroller's rules. The comptroller's rules are in 34 TAC Part 1.

In addition to statutory reasons and rule review, the newly adopted sections contain language to clarify requirements for the industry and consumers. In addition to organizing the sections into four subchapters, it also breaks requirements into short subsections and paragraphs to aid readability.

In total, there are six new sections that do not contain provisions similar to those in the repealed sections: §15.3, relating to regulation of policies; §15.7, relating to submission of applications, notices, and correspondence; §15.111, relating to exempt commercial purchaser documentation; §15.112, relating to industrial insured documentation; §15.114, relating to untimely filed policies; and §15.201, relating to Commissioner approval of the tamping office's plan of operation.

Subchapter A. General Provisions. TDI adopts subchapter A titled "General Provisions" that contains nine sections consisting of §§15.1 – 15.9. Section 15.1, is adopted with changes from the text as proposed. Newly added §15.1(c) is also adopted. Additionally, §§15.3, 15.5, 15.8 and 15.9 are also adopted with changes from the text as proposed. Details on the changes are described in the following paragraphs.

In subchapter A, there are two sections that include provisions that are not similar to the repealed text: §15.3, relating to regulation of policies; and §15.7, relating to submission of applications, notices, and correspondence. The other sections in adopted subchapter A are based on repealed sections. If text is based on repealed sections, it is identified in the descriptions that follow.

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Section 15.1. Applicability. Section 15.1 is adopted with changes. In response to comments and further analysis by TDI, changes were made to the section name and §15.1(a) and (b). In addition, new subsection (c) was added. The changes are discussed in the following paragraphs.

The section name was changed from "Effective Date of Rules and Regulations" to "Applicability" because it better describes the purpose of the section.

Section 15.1(a) is adopted with changes. Section 15.1(a) was changed to make it clear the whole chapter, not just certain sections, applies to surplus lines transactions. As it was worded before, the types of transactions and circumstances that fall under the chapter were not specifically identified as surplus lines insurance transactions.

Section 15.1(a) clarifies that the rules apply if Texas is the home state of the insured. Insurance Code Chapter 981 and Chapter 15 provide an orderly method for each person whose home state is Texas to get surplus lines insurance with an eligible surplus lines insurer through a licensed surplus lines agent. Insurance Code Chapter 981 and Chapter 15 apply if the insured's home state is Texas and "home state" is defined in the NRRA under 15 U.S.C.A. §8206(6)(A)(i) and in Insurance Code §981.002(5).

The phrase "on or after the effective date of each section" is deleted from §15.1(a) because it is unnecessary. Requirements cannot legally apply before a rule is effective.

Additionally, in §15.1(a), the phrase "the sections in" at the start of the sentence is deleted, "this" is capitalized as it is now the start of the sentence, the verb is changed from "apply" to "applies," and the phrase "and circumstances taking place on or after the effective date of each section" is deleted and "surplus lines insurance" is added.

Section 15.1(b) is adopted with changes. Section 15.1(b) establishes that rules applicable to licensing, regulation, and supervision of surplus lines agents and surplus

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lines insurers and transactions in effect before the effective date of the chapter are adjudicated under the rules in effect at the time of the transaction. Adopted new §15.1(b) is changed by adding the word "the" before the words "applicable section" and adding the words "in this chapter" after "applicable section" for grammatical reasons and to clarify that the applicable sections are in Chapter 15.

In response to comments, another subsection is added to this section. The new subsection, Subsection (c), has an applicability date for §15.114, relating to untimely filed policies, of January 1, 2019.

Section 15.2. Definitions. Section 15.2 is adopted with changes as discussed in the following paragraphs.

Section 15.2 includes new definitions, including definitions based on text in repealed §15.2. The definition of "admitted or authorized insurer" in proposed §15.2(b)(1) is not adopted, so the adopted definitions have revised paragraph numbers. The other changes are described in the following paragraphs.

Section 15.2(a) clarifies that the definitions in Insurance Code §981.002 and §981.071 apply to the chapter.

Based on a comment and TDI's further analysis, the definition of "admitted or authorized insurer" in §15.2(b)(1) is not adopted because the defined term is unnecessary in the context of §15.104(d), which is the only place that the term is used. This requires redesignation of the paragraph numbers for the defined terms that follow it.

Section 15.2(b) defines the terms "client," "Commissioner," "comptroller," "person," "Stamping Office," "state," "surplus lines agent," "TDI," "timely filed," and "untimely filed."

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Section 15.3. Regulation of Policies. Section 15.3 is adopted with changes as discussed in the following paragraphs.

Section 15.3 implements SB 951, 83rd Legislature, Regular Session (2013) by clarifying that a surplus lines policy is subject to Texas regulation if the insured's home state is Texas. Under Insurance Code §981.002(5), an insured's home state is the insured's principal place of business or principal residence. Section 15.3(1) clarifies that the principal place of business is the location from which the officers of an insured that is not an individual direct, control, and coordinate the insured's activities, which is generally the insured's headquarters. Section 15.3(2) clarifies that the principal residence is the state where the insured who is an individual resides for the greatest number of days during a calendar year.

Based on a comment, §15.3(1) is adopted with changes. The subject of the sentence did not agree with the verb. Therefore, the "s" is removed from the end of "direct, control and coordinate" in §15.3(1).

Section 15.4. Sanctions. Section 15.4 is adopted without changes.

Section 15.4, relating to sanctions, reflects repealed §15.5, which also related to sanctions. Like repealed §15.5, new §15.4 allows for the assessment of administrative penalties against a surplus lines agent. The revocation or suspension of a license continues as an option for TDI after notice and an opportunity for hearing. The grounds for sanctions under §15.4(a) are the same as under repealed §15.5(a) and include: any action that would form the basis for sanctions against a general property and casualty agent or managing general agent, as applicable to the surplus lines agent's other license; failure to allow the inspection of records; failure to file reports; failure to collect and pay required taxes and

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stamping fee; failure to maintain qualifications for a surplus lines agent license; or violation of any insurance law or regulation.

Section 15.4(b) clarifies that except for a nonresident surplus lines agent licensed under Insurance Code §981.203(a-1), a surplus lines agent may not renew his or her surplus lines license or act as a surplus lines agent if 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.

Section 15.4(c) clarifies that a surplus lines agent whose license has been revoked or suspended must have all fines, penalties, delinquent taxes, and delinquent stamping fees paid before a license will be issued or renewed, or a suspension lifted.

Section 15.5. Minimum Content of Contracts. Section 15.5 is adopted with changes as discussed in the following paragraphs.

Section 15.5, relating to minimum content of contracts, reflects repealed §15.21, which also related to minimum content of contracts. Section 15.5 sets out the minimum content required for every new or renewal surplus lines insurance contract, policy, certificate, cover note, or other confirmation of insurance purchased and delivered. Section 15.5(a)(1) – (3) lists the requirements as: the information required by Insurance Code §981.101, a statement designating the name and address of the person to whom service of process will be made, and a stamping fee. Of these requirements, only §15.5(a)(1), referring to the information required under Insurance Code §981.101, is not based on provisions in repealed §15.21.

Section 15.5(b) clarifies that the requirement under Insurance Code §981.101(b) is not applicable to a contract issued by a domestic surplus lines insurer.

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Section 15.5(b) is adopted with changes. As proposed, the provision had a typo and was missing a word. The word "the" was mistakenly placed before the words "Insurance Code" and the word "Chapter" was missing in between "Insurance Code" and "981." As adopted, §15.5(b) is adopted.

Section 15.5(c) provides the language that must appear on every domestic surplus lines insurer contract. This implements HB 2492, 85th Legislature, Regular Session (2017), relating to domestic surplus lines insurers. Specifically, it implements Insurance Code §981.076(b), which states that a surplus lines document issued by a domestic surplus lines insurer must include a statement in the form and manner provided by Commissioner rule.

Based on a comment, §15.5(c) is adopted with changes. As proposed, the provision had two typos in it. The first was the term "domestic surplus license insurer," which should be "domestic surplus lines insurer"; and the second was "surplus line coverage," which should be "surplus lines coverage." As adopted, §15.5(c) has been corrected.

Section 15.6. Forms. Section 15.6 is adopted without changes.

Section 15.6, relating to uniformity of reporting forms, reflects repealed §15.11, which also related to uniformity of reporting forms. Section 15.6 states that all required applications, reports, and memorandums required under the Insurance Code or 28 TAC Chapter 15 must include all required information.

Section 15.7. Submission of Applications, Notices, and Correspondence. Section 15.7 is adopted without changes.

Section 15.7(a) states that all submissions to the Commissioner or to TDI must be sent to the appropriate physical, mailing, or electronic address. Section 15.7(b) states that

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all submissions to the stamping office must be sent by a method acceptable to the stamping office.

Section 15.8. Filing Requirements. Section 15.8 is adopted with changes as discussed in the following paragraphs.

Section 15.8, relating to filing requirements, reflects repealed §15.13, which related to correct execution required for filing. Based on a comment, the title of §15.8 is adopted with changes. As proposed it was "Correct Execution Required for Filing," but as adopted it is "Filings Requirements," because this title is easier to understand.

Section 15.8(a) requires that all reports must comply with §15.6 before they will be deemed filed with TDI or the stamping office.

Section 15.8(b) states that a correct surplus lines policy submitted to the stamping office will be deemed filed the day the transaction is posted by the stamping office. The acceptable submission methods are stated in §15.7.

Section 15.8(c) requires the surplus lines agent responsible for a filing to maintain the contract file at the agent's place of business, and the contract file must be available for inspection by the stamping office upon request.

Section 15.8(d) clarifies that nothing in the section limits the requirements to submit information or reports under the Insurance Code or 28 TAC Chapter 15 to TDI.

Section 15.9. Becoming an Eligible Insurer. Section 15.9 is adopted with changes as discussed in the following paragraphs.

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Section 15.9, relating to becoming an eligible insurer, reflects repealed §15.7, which related to eligibility requirements for surplus lines insurance. However, §15.9 does not include the provision in repealed §15.7(c).

Based on a comment, the section name of §15.9 is adopted with changes. It was "Eligibility Requirements for Surplus Lines Insurance" but is now "Becoming an Eligible Insurer" because it is easier to understand.

Section 15.9(a) requires the stamping office evaluate all surplus lines documents for eligibility and compliance and permits the stamping office to request additional information needed to complete their evaluation. Section 15.9(a) reflects repealed §15.7.

Section 15.9(b) reflects repealed §15.7(b). Section 15.9(b) requires the stamping office report certain instances of noncompliance to TDI. Section 15.9(b)(1) requires the stamping office to report within 60 days of discovery: a) surplus lines insurance policies that the stamping office received, or is aware of, that were issued by ineligible insurers; b) surplus lines insurance policies or contracts that the stamping office receives, or is aware of, that are not compliant with the Insurance Code, whether it is due to the type of insurance policy issued or for any other reasons; and, c) any action by an unlicensed agent that requires a license, such as issuing a surplus lines policy, filing the policy with the stamping office, or any other prohibited unlicensed activity.

Based on a comment, §15.9(b)(1) is adopted with changes. Section 15.9(b)(1) as proposed had a typographical error in it; the word "license" was used instead of "lines" when referring to an eligible surplus lines insurer. Adopted §15.9(b)(1) corrects the error.

Section 15.9(b)(2) requires the stamping office report promptly upon discovery any surplus lines policy or contract that has uncorrected administrative or technical errors that

the stamping office has asked the surplus agent to correct if the surplus lines agent fails to do so.

Subchapter B. Surplus Lines Agents. TDI adopts subchapter B titled "Surplus Lines Agents" that contains 16 sections consisting of §§15.101 – 15.115. There are three sections that include completely new provisions: §15.111, relating to exempt commercial purchaser documentation; §15.112, relating to industrial insureds documentation; and §15.115, relating to untimely filed policies. The other remaining sections adopted in subchapter B are sections based on the repealed sections. These will be identified in the descriptions in the following paragraphs.

Sections 15.101, 15.102, 15.104, 15.105, 15.106, 15.107, 15.110, 15.111, 15.112, 15.113, 15.114 and 15.115 are adopted with changes as explained in the following paragraphs.

Section 15.101. Licensing of Surplus Lines Agents. Section 15.101 is adopted with a change to §15.101(d). The rest of §15.101 is adopted without changes.

Section 15.101, licensing of surplus lines agents, reflects repealed §15.3, which also related to licensing of surplus lines agents.

Section 15.101(a) lists the type of surplus lines insurance activities that require a surplus lines agent license under Insurance Code Chapter 981, which are the same as those listed under repealed §15.3(a)(1) – (3).

Section 15.101(b) lists activities that may be performed by unlicensed individuals if supervised by a licensed surplus lines agent. The activities listed in §15.101(b)(1) – (3) are the same as those listed in repealed §15.3(b)(1) – (4).

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Section 15.101(c) clarifies that agency profits may be distributed to unlicensed persons, including shareholders, partners, or employees. Section 15.101(c) is the same as repealed §15.3(c).

Section 15.101(d) lists licensing submission requirements. Section 15.101(d) lists the same requirements as repealed §15.3(d). The proposed text of §15.101(d)(1) is changed. The word "written" is deleted before the word "application" so that there is no confusion relating to electronic applications.

Section 15.101(e) clarifies licensing requirements for Texas residents and nonresident applicants who do not hold a surplus lines license or are residents of a non-reciprocal state. Section 15.101(e) is the same requirement as repealed §15.3(e).

Section 15.101(f) clarifies licensing requirements for nonresident applicants holding surplus lines licenses in reciprocal states. Section 15.101(f) is the same requirement as repealed §15.3(f).

Section 15.101(g) implements a new statutory requirement. It clarifies that 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). This implements SB 697, 83rd Legislature, Regular Session (2013), which allows non-resident surplus lines agents to do business in Texas without a property and casualty license provided they are complying with their domiciliary state's licensure requirements and meet the requirements under Insurance Code §981.203(a-1).

Section 15.101(h) clarifies license expiration and renewal procedures. Section 15.101(h) reflects the requirements in repealed §15.3(g).

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Section 15.102. Conduct of Agent's Business. Section 15.102 is adopted with changes as discussed in the following paragraphs.

Section 15.102(a) clarifies that a surplus lines agent doing business as an individual may be licensed only in his or her name and may not hold more than one surplus lines license. Additionally, a surplus lines agent doing business under an assumed name must comply with 28 TAC §19.902, relating to one agent, one license. The requirements in §15.102(a) reflect those in repealed §15.6(a).

Section 15.102(b) clarifies that an insurance agent doing business as a partnership, corporation, or limited liability company may obtain a surplus lines agent license if it has the qualifications and has been issued a license under the Insurance Code for either a general property and casualty agent or a managing general agent. The surplus lines agent license will be issued in the same name as the underlying license. A partnership, corporation, or limited liability company is permitted to have only one surplus lines agent license. Additionally, a partnership, corporation, or limited liability company doing business under an assumed name must comply with 28 TAC §19.902, relating to one agent, one license. The requirements in §15.102(b) reflect those in repealed §15.6(b).

Based on a comment, the phrase "except when Insurance Code §981.203(a-1) is applicable" is added because without the reference the exception may appear not to apply.

Section 15.102(c) clarifies that if a surplus lines agent acts under an assumed name, that the true name of the surplus lines agent must also clearly be disclosed. The requirements in §15.102(c) reflect those in repealed §15.6(c).

Section 15.102(d) clarifies that a surplus lines agent is prohibited from shifting, transferring, delegating, or assigning his or her responsibility to a person not licensed as

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a surplus lines agent. Section 15.102(d) further clarifies a surplus lines agent may not file with the stamping office a policy for a transaction in which the surplus lines agent did not place the policy.

Section 15.102(e) clarifies that the surplus lines agent remains responsible for the timeliness and accuracy of filings regardless of whether the surplus lines agent has contracted with a third-party to meet the filing requirements under Insurance Code §981.105(a) and (b) and that the licensed surplus lines agent must pay any fees owed or penalties assessed on untimely filed policies.

Section 15.102(e) is adopted with changes. The proposed text did not use a hyphen between the words "third party." As adopted, §15.102(e) has been corrected.

Section 15.102(f) clarifies that a surplus lines agent may exercise underwriting authority only if there is a current written agreement from each eligible surplus insurer granting the authority, lists the elements that must be contained in the agreement, and requires the agreement be available for review by TDI. The requirements in §15.102(f) reflect those in repealed §15.6(e).

Section 15.102(g) states that there must be a current written agreement in place for a surplus lines agent to exercise claims authority on behalf of an eligible surplus lines insurer, a Texas-licensed adjuster must perform all claims adjustments, and the agreement must be available for review by TDI. It includes a clarification that a Texas-licensed adjuster is not required if the policy covers risks in multiple states and the claim is for a loss on a non-Texas risk. Here, the adjuster must be licensed in the state where the risk is located. The requirements in §15.102(g) reflect those in repealed §15.6(f).

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Section 15.102(g)(1) states the types of claims authority that may be delegated to a surplus lines agent by an insurer. The requirements in §15.102(g)(1) reflect those in repealed §15.6(f).

Section 15.102(g)(2) states that surplus lines insurers are not relieved of any continuing obligations to the insured if partial payments are made by the surplus lines agent, that a current written agreement must exist if a surplus lines agent is authorized to and does directly pay claims on behalf of the eligible surplus lines insurer, and that the agreement must be available for review by TDI. The requirements in §15.102(g)(2) reflect those in repealed §15.6(f).

Section 15.103. Surplus Lines Stamping Fee. Section 15.103 is adopted without changes.

Section 15.103 states that a surplus lines agent must pay a stamping fee for each surplus lines policy, contract, or other detailed evidence of coverage issued on Texas risks and the fees are due and payable as provided in §15.106, relating to stamping office filings and fees. The requirements in §15.103 reflect those in repealed §15.10.

Section 15.104. Reasonable Duty in Placing Coverage. Section 15.104 is adopted with changes as discussed in the following paragraphs.

Based on a comment, §15.104 was named "Duty of Reasonable Effort by Surplus Lines Agent to Ascertain Financial Condition and Other Practices of Eligible Surplus Lines Insurers" as proposed but is now "Reasonable Duty in Placing Coverage" because it is easier to understand.

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Section 15.104(a) clarifies that a surplus lines agent must make a reasonable inquiry into the financial condition and operating history of the insurer before placing insurance. The requirements in §15.104(a) reflect those in repealed §15.9(a).

Section 15.104(b) clarifies that a surplus lines agent has a continuous duty to stay informed of the insurer's solvency, soundness of its financial strength, and ability to process claims and pay losses promptly and efficiently. The requirements in §15.104(b) reflect those in repealed §15.9(b).

Section 15.104(c) clarifies that a surplus lines agent must immediately inform TDI and the stamping office if there is doubt to the capacity, competence, stability, claims practices, or business practices of an insurer. Section 15.104(c) reflects repealed §15.9(c).

Section 15.104(d) clarifies that a surplus lines agent must immediately inform TDI and the stamping office if the agent has reasonable grounds to believe that an insurer that is not admitted, not on the NAIC's alien insurer list, or is not an eligible surplus lines insurer and is doing the business of insurance in this state. Section 15.104(d) reflects repealed §15.9(d).

Based on a comment, §15.104(d) is adopted with changes. A comma is added to adopted §15.104(d) to make it clearer that the end of the sentence applies to all three types of insurers mentioned just before it. Section 15.1014(d) states, "A surplus lines agent must immediately inform TDI and the stamping office if the agent has reasonable grounds to believe that an insurer that is not an admitted insurer, an alien insurer listed with the NAIC's International Insurer Department, or an eligible surplus lines insurer, is transacting the business of insurance in this state."

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Section 15.104(e) clarifies that a surplus lines agent placing insurance on Texas risks must only do so with an eligible insurer under the Insurance Code and TDI's rules. Section 15.104(e) reflects repealed §15.9(e).

Section 15.105. Evidence of Insurance. Section 15.105 is adopted with changes as discussed in the following paragraphs.

Based on a comment, §15.105 was named "Furnishing Evidence of Insurance" as proposed but is now "Evidence of Insurance" because it is easier to understand.

Section 15.105(a) clarifies that to avoid misunderstanding, the surplus lines agent must give the insured a complete written copy of the evidence of insurance and a temporary confirmation must be replaced as quickly as possible. Section 15.105(a) reflects repealed §15.22(a).

Section 15.105(a) is adopted with changes. The words "so as" have been deleted because they are unnecessary. As adopted, §15.105(a) has been corrected.

Section 15.105(b) clarifies that if there is a change in the insurer, the portion of the direct risk assumed by the insurer, or any other major changes, the surplus lines agent must promptly send a substitute document that accurately shows the status of coverage and the responsible insurers. Section 15.105(b) reflects repealed §15.22(b).

Section 15.106. Stamping Office Filing and Fees. Section 15.106 is adopted with changes as discussed in the following paragraphs.

Based on a comment, §15.106 was named "Policy Forms Filings and Stamping Office Fees" as proposed but is now "Stamping Office Filing and Fees" because it better describes the section.

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Section 15.106(a) clarifies that the surplus lines agent must file a true and correct copy of each executed surplus lines policy, contract, or other detailed evidence of coverage within 60 days of issuance or the effective date, whichever later, with the stamping office. If evidence of coverage other than the policy is initially filed, the policy must be filed within 60 days of it becoming available. This is to ensure that the stamping office receives all executed policies, contracts, or other detailed evidences of coverage, including additions, deletions, or cancellations in a timely manner.

Section 15.106(b) clarifies the items that comprise the term "true and correct copy of a surplus lines insurance policy." Section 15.106(b) reflects repealed §15.23(c).

Section 15.106(c) clarifies that the stamping office will compile the information obtained under §15.106(b) within 10 days after the end of the month and will provide the surplus lines agent with a notice of the total stamping fees due. The fees are due to the stamping office by the end of the month in which the notice is received. Section 15.106(c) reflects repealed §15.23(c).

Section 15.107. Requests for Information. Section 15.107 is adopted with changes as discussed in the following paragraphs.

Based on a comment, the name of §15.107 is changed from "Surplus Lines Insurance Requests for Information, Examination, and Complaints" to "Requests for Information" because it is easier to understand.

Section 15.107(a) clarifies that the stamping office may need to ask the surplus lines agent for information to evaluate the eligibility of the surplus lines policies, contracts, or other detailed evidence of coverage. Section 15.107(a) reflects repealed §15.12.

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Section 15.107(b) clarifies that TDI will be notified if the surplus lines agent does not provide the information to the stamping office in a timely manner. Section 15.107(b) reflects repealed §15.12.

Section 15.107(c) clarifies that the stamping office may review the information at the surplus lines agent's place of business if agreed to by both parties. Section 15.107(c) reflects repealed §15.12.

Section 15.107(d) clarifies that §15.107 does not limit TDI's ability to request information or reports required under the Insurance Code or 28 TAC Chapter 15. Section 15.107(d) reflects repealed §15.12.

Section 15.108. Recordkeeping. Section 15.108 is adopted without changes.

Section 15.108(a) clarifies what insurance and accounting records surplus lines agents must maintain. These include a policy register, a contract file, general books of account, and any other insurance or accounting records that are required under the Insurance Code or 28 TAC Chapter 15.

Section 15.108(a) reflects repealed §15.14(a) except it also requires the surplus lines agent to maintain a list of all agreements entered into with a managing underwriter under Insurance Code §225.006(c) and copies of the agreements.

Section 15.108(b) clarifies that the surplus lines agent's records that are required to be kept by the Insurance Code and 28 TAC Chapter 15 are subject to examination by TDI and the comptroller at all times and without notice. Additionally, the records and accounts must be available for inspection and review by TDI for five years following the expiration or termination of an insurance contract, unless specified otherwise in the Insurance Code. Section 15.108(b) reflects repealed §15.14(a).

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Section 15.109. Policy Number. Section 15.15 is adopted without changes.

Section 15.109(a) clarifies that the surplus lines agent must record the policy number and name of the insured immediately upon procuring the insurance for the insured. Section 15.109(a) does not include the chronological policy requirement found in repealed §15.15(a) because of a change in industry practice relating to how policy numbers are generated. Other than this, §15.109(a) reflects repealed §15.15(a).

Section 15.109(b) clarifies that if the surplus lines agent can issue policies on behalf of the eligible surplus lines agent, or if there is a policy that is voided or not used, the agent must document an explanation in the policy number register. Section 15.109(b) does not include the repealed §15.15(b) requirement for a chronological sequence in the assignment of policy numbers, because of a change in industry practice on how policy numbers are generated. Other than this, §15.109(b) reflects repealed §15.15(b).

Section 15.110. Contract File. Section 15.110 is adopted with changes as described in the following paragraphs.

Based on a comment about the information requested under §15.110, the section now refers the surplus lines agent to the contract file requirements listed in Insurance Code §981.215(a) and §§15.110(1) – (11).

Because of this change, the section changed in a few ways. First, the phrase "including a copy of the daily report or other evidence of insurance, including the following items" is deleted and the phrase "including the items described under Insurance Code §981.215(a) and the following" is inserted. Under Insurance Code §981.215(a)(13),

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TDI is authorized to request information in addition to the items listed in Insurance Code §981.215.

Second, the requirements in the rule that were also in the statute have been deleted from the rule text. As proposed, §15.110 contained 14 requirements. As adopted, §15.110 contains 11 requirements.

Finally, §15.110(4) – (6) and (9) are not adopted in the rule text, because they are listed in Insurance Code §981.215(a). Proposed §15.110(5) is not adopted in the rule text because it requests the same information as adopted §15.110(4).

The adopted sections are as follows:

- Section 15.110(1) now contains the requirement that the contract file include a copy of the daily report or other evidence of insurance instead of the requirement being part of the description in §15.110.
- Section 15.110(2) was proposed as §15.110(1). It requires the amount of insurance and perils insured against.
- Section 15.110(3) was proposed as §15.110(2). It requires a brief description of the property insured and its location, including ZIP code.
- Section 15.110(4) was proposed as §15.110(3). It requires the gross premium.
- Section 15.110(5) was proposed as §15.110(7). It requires the name and mailing address of the insured.
- Section 15.110(6) was proposed as §15.110(8) and requires the name and home office address of the insurer, underwriting syndicate or other-risk bearing entity.
- Section 15.110(7) was proposed as §15.110(10). It requires a record of losses or claims filed and payments due.

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- Section 15.110(8) was proposed as §15.110(11). It requires a true and correct copy of the insurance policy, contract, and other detailed evidence of coverage, as issued to the insured.
- Section 15.110(9) was proposed as §15.110(9). It requires all correspondence relating to the specific insurance coverage of that contract file.
- Section 15.110(10) was proposed as §15.110(13). It requires support for the exempt commercial status. The words "if applicable" were deleted and the phrase "complying with Insurance Code §981.215(a)(12)(A) and §15.111 of this title" was added. Exempt commercial purchaser was added by SB 951.
- Section 15.110(11) was proposed as §15.110(13). It requires support for the industrial insured status. The words "if applicable" were deleted and the phrase "complying with Insurance Code §981.215(a)(12)(B) and §15.112 of this title" was added. Industrial insured was added by HB 1559.

Section 15.111. Exempt Commercial Purchaser Documentation. Section 15.111 is adopted with changes as discussed in the following paragraphs.

Based on a comment, the name of §15.111 is changed from "Required Documentation Supporting Exempt Commercial Purchaser Status" to "Exempt Commercial Purchaser Documentation" because it is easier to understand.

Section 15.111(1) requires the surplus lines agent retain a copy of the document described in Insurance Code §981.004(c)(2), and §15.111(2) requires the surplus lines agent retain 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. Provisions addressing exempt commercial purchasers were added by SB 951. They permit an

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exemption from Insurance Code §981.004(a)(1) for insureds meeting certain criteria under Insurance Code Chapter 981. Section 15.111 requires the surplus lines agent maintain documentation to support the exemption.

Section 15.112. Industrial Insured Documentation. Section 15.112 is adopted with changes as discussed in the following paragraphs.

Based on a comment, the name of §15.112 is changed from "Required Documentation Supporting Industrial Insured Status" to "Industrial Insured Documentation" because it is easier to understand.

Based on a comment, §15.112(1) is also adopted with changes. It now requires the surplus lines agent to retain documentation supporting compliance with Insurance Code §981.004(d)(2) and (3), not just §981.004(d)(3) because the statute requires evidence of compliance. Section 15.112(1) deletes the phrase "a copy of the document described in Insurance Code §981.004(d)(3)" and replaces it with "compliance with Insurance Code §981.004(d)(2) and (3)."

Section 15.112(2) requires the surplus lines agent retain a signed statement from the insured identifying which provisions of Insurance Code §981.0032(3) and §981.0033(2) are applicable to the insured. Provisions addressing industrial insureds were added by HB 1559. They permit an exemption from Insurance Code §981.004(a)(1) for insureds meeting certain criteria under Insurance Code Chapter 981. Section 15.112 requires the surplus lines agent maintain documentation to support the exemption.

Section 15.113. Agent Accounting Records. Section 15.113 is adopted with changes as discussed in the following paragraphs.

Section 15.113 requires each surplus lines agent to maintain accounting records, and §15.113(b) requires the records show a summary of operation for month-end and year-to-date. The records also must be kept in accordance with generally accepted accounting principles. Section 15.113 reflects repealed §15.17.

Section 15.113 is adopted with changes. As proposed, there was a hyphen after the word "fiscal" that was not necessary. As adopted, §15.113(b) has been corrected.

Section 15.114. Untimely Filed Policies. Section 15.114 is adopted with changes as discussed in the following paragraphs.

Section 15.114 clarifies the process for handling policies that were not filed timely with the stamping office. This section requires that late policies be reviewed on a rolling basis throughout the year. It also assists TDI in complying with Insurance Code §981.105(i), which requires TDI provide notice to each agent of the amount of fees assessed during each calendar year no later than June 15 of the following year.

Section 15.114(a) clarifies that the stamping office must provide or make obtainable to the surplus lines agent a report of late filed policies on or before the 15th day of each month.

Section 15.114(b) clarifies that the surplus lines agent must take action to any policy listed in the report under §15.114(a) that it believes was filed timely within the earlier of 90 days of the report or February 15 of the following year. Section 15.114(b)(1) and (2) clarify that the surplus lines agent must either correct the errors or, if the error cannot be corrected, notify the stamping office of its objection and identify the filing at

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issue, describe any special factors or unique circumstances, and provide any additional supporting documentation they believe supports their position.

Section 15.114(b)(3) clarifies that the stamping office must review and research the notification provided by the surplus lines agent under §15.115(b)(2) and provide TDI with a summary and its opinion on whether the policy should be considered timely within the earlier of either 30 days or March 1. TDI will make the final determination on the policy's timeliness by the earlier of 45 days after receipt of the stamping office's analysis or March 15 and the stamping office will make any necessary changes to the records.

Section 15.114(c) clarifies that the surplus lines agent waives the right to later dispute the timeliness of a filing unless the process under §15.114(b) is followed.

Section 15.114(d) clarifies that the stamping office will provide TDI with a report no later than the first business day of April that lists all the policies that were not filed on time in the previous calendar year. Filings that were corrected under §15.114(b)(1) or determined to be on time under §15.114(b)(3) will not be included in the annual report.

Section 15.114(d) is adopted with changes. The words "of the" after the word "all" and before "surplus lines policies" have been deleted because they are unnecessary. As adopted, §15.114(d) has been corrected.

Section 15.115. Surplus Lines Policies for Purchasing Groups. Section 15.115 is adopted with changes as discussed in the following paragraphs.

Based on a comment, the name of §15.115 is changed from "Purchase of Insurance by Purchasing Groups through Surplus Lines Agents" to "Surplus Lines Policies for Purchasing Groups" because it is easier to understand.

Section 15.115 clarifies statutory requirements.

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Section 15.115(a) defines purchasing group. Section 15.115(a)(1) clarifies that a purchasing group must have as one of its purposes the purchase of liability insurance on a group basis. Section 15.115(a)(2) clarifies that a purchasing group must be a group that purchases liability insurance only for its group members and only to cover their similar or related liability exposure. Section 15.115(a)(3) clarifies that a purchasing group must be made of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by any related, similar, or common business, trade, product, service, premise, or operation. Section 15.115(a)(4) clarifies they must be domiciled in a state. Section 15.115(a) reflects repealed §15.25(a).

Section 15.115(a)(3) is adopted with changes. The words "virtue of" before "any related, similar, or common business, trade, product ..." have been deleted because they are unnecessary. As adopted, §15.115(a)(3) has been corrected.

Section 15.115(b) clarifies the requirement that the surplus agent must submit the filings required under Insurance Code §981.105 and the stamping fees to the stamping office for insurance purchased by registered purchasing groups. This is consistent with Insurance Code §981.105 requirements. There is no statutory exemption regarding the filing of purchasing group documents with the stamping office.

Section 15.115(c) clarifies that the surplus lines agent must stamp or write the words "Purchasing Group" conspicuously on every policy, contract, or other detailed evidence of coverage issued to a purchasing group or its members. Section 15.115(c) reflects repealed §15.25(c).

Section 15.115(d) clarifies that a surplus lines agent may only sell insurance to a registered purchasing group, unless the purchasing group is exempt from registering

under Insurance Code §2201.256. Registered purchasing groups are listed on TDI's website. Purchasing groups are required to register under Insurance Code §2201.256.

Subchapter C. Surplus Lines Stamping Office Plan of Operation. Subchapter C is titled "Surplus Lines Stamping Office of Texas Plan of Operation" and consists of one section, §15.201. Subchapter C is adopted without changes.

Insurance Code §981.153(a) requires the Commissioner to approve the plan of operation, and Insurance Code §981.153(b) requires the Commissioner to approve amendments by Commissioner order. Because the plan of operation was historically part of the rule text, amendments to the plan of operation required a rule amendment. Subchapter C does not include the plan of operation in the rule text. Instead, it establishes a more efficient process for approving amendments by Commissioner order in compliance with Insurance Code §981.153(b).

Section 15.201. Commissioner Approval. Section 15.201 is adopted without changes.

Section 15.201 describes the process for approval of amendments to the stamping office's plan of operation.

Section 15.201(a) clarifies that the stamping office's plan of operation and any amendments made to it are effective once approved by Commissioner order. It also clarifies that the stamping office must operate under the plan of operation.

Section 15.201(b) clarifies that amendments to the plan of operation must be submitted by the stamping office to the Commissioner for approval. Section 15.201(b)(1) clarifies that the Commissioner may accept or reject some or all of the amendments and §15.201(b)(2) clarifies that TDI will provide an opportunity for public comment on the

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amendments to the plan of operation. Detailed instructions on how to submit comments will be provided on TDI's website along with the proposed amendments. Section 15.201(b)(4) clarifies that the Commissioner will approve amendments to the plan of operation by Commissioner order, which complies with Insurance Code §981.153(b).

Section 15.201(c) clarifies that the Commissioner will amend the plan of operation under Insurance Code §981.153(c) if amendments proposed by the stamping office are unacceptable.

Section 15.201(d) clarifies that the most recent version of the plan of operation will be posted on the stamping office's website.

Section 15.201(e) clarifies the process for changing the stamping fee.

Subchapter D. Surplus Lines Insurers. Subchapter D is titled "Surplus Lines Insurers" and consists of one section, §15.301.

Section 15.301 is adopted with changes as discussed in the following paragraphs.

Based on a comment, the name of §15.301 is changed from "Eligibility Requirements of Surplus Lines Insurers" to "Evaluation Requirements of Surplus Lines Insurance Coverage" because it better describes the section.

Section 15.301(a) clarifies that surplus lines insurers not designated as domestic surplus lines insurers must submit certain information to TDI and the stamping office.

Section 15.301(a)(1) clarifies that surplus lines insurers domiciled in other states must only provide evidence of authorization from their domiciliary jurisdiction to write the same kind of business it proposes to write in Texas and that it meets the capital and surplus requirements in Insurance Code §981.057.

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Section 15.301(a)(2) clarifies that alien insurers listed with the NAIC's International Insurer Department are not required to submit anything to TDI but are encouraged to submit the address and phone number of a contact in the United States and identify the types of insurance the company will write in Texas.

Section 15.301(b) requires domestic surplus lines insurers to provide a copy of the certificate issued to them by TDI to the stamping office and documentation supporting the required capital and surplus.

Section 15.301 reflects repealed §15.8.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received timely written comments from seven commenters. Commenters in support of the proposal are Insurance Licensing Services of America and Texas Surplus Line Reporter and Insurance News. Commenters in support of the proposal with changes are American Insurance Association, Property and Casualty Insurance Company of America, the Surplus Lines Stamping Office of Texas, Texas Comptroller of Public Accounts, and Texas Surplus Lines Association.

Comment on Proposal in General.

One of the commenters noted that the preamble in the proposal had a typo on page 9 and on page 17. On page 9, the section number reference for "Untimely Filed Policies" should be §15.114, not §15.115. The same typo is repeated on page 17 of the preamble when explaining what §15.114 does.

Agency Response to Comment on Proposal in General.

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TDI agrees that the section number should be §15.114, related to untimely filed policies, on pages 9 and 17, but a reader would not be misled on which section is described or what the section does based on the section number typo. On page 9, the section number typo is followed by the section name "Untimely Filed Policies" and on page 17 the descriptions of the subsections explain the process for untimely filed policies. Because the typo is not misleading about what the section does, the rule will not be repropose with a corrected preamble. The reasoned justification section of this adoption order that describes "Untimely Filed Policies" correctly references §15.114, not §15.115.

Comment on Proposal in General.

There were several positive comments about new Chapter 15. One commenter thanked TDI for taking into consideration their suggestions on the informal posting of the rule. Another commenter said that TDI's method of promulgating rules is transparent and the preamble was clear and concise. Two commenters said the proposed new Chapter 15 is positive in general.

Agency Response to Comment on Proposal in General.

TDI thanks the commenters for their support.

Comment on Proposal in General.

Several commenters support the repeal of the rules relating to tax. One commenter was concerned that the tax rules need to be updated in 34 TAC §3.820 and §3.822 because federal and state laws have passed since the sections' last update. One commenter requested a dialogue with the Texas Comptroller of Public Accounts about tax sharing

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agreements, tax filings, tax collection, and the taxes applicable to a domestic surplus lines insurer.

Agency Response to Comment on Proposal in General.

TDI thanks the commenters for their support of repealing the tax rules.

The proposal does not address 34 TAC §3.820 and §3.822, tax sharing agreements, tax filings, tax collection, or the taxes applicable to a domestic surplus lines insurer because tax rules are under the Texas Comptroller of Public Accounts. TDI encourages the commenter to contact the Texas Comptroller of Public Accounts for questions related to tax sharing agreements, tax filings, tax collection and review Insurance Code Chapter 981 for taxes that are applicable to domestic surplus lines insurers.

Comment on §15.1.

A commenter requests that the effective date of the rules be 90 days after adoption or January 1, 2019, whichever is later. The commenter requests the delayed effective date so the regulated parties have time to implement changes.

Agency Response to Comment on §15.1.

TDI disagrees with changing the effective date of the rules. The rules will all have the same effective date so that they will be published at the same time on the secretary of state's website. Under Government Code §2001.036, the default effective date for an adoption order is 20 days after it is filed with the secretary of state.

TDI agrees that §15.114, related to untimely filed policies, may take regulated parties time to implement and agrees to change the applicability date for §15.114 to January 1, 2019, but disagrees to make the applicability date 90 days after adoption. TDI disagrees that the other sections will require time to implement and so all other sections

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besides §15.114 are applicable 20 days after the adoption is filed with the secretary of state.

Section 15.1 will be renamed "Applicability" to make these changes clear.

Comment on §15.2(b)(1).

Proposed §15.2(b)(1) defines "admitted or authorized insurer" as an insurer doing the business of insurance in this state, as defined in Insurance Code §101.051, and licensed under the provisions of the Insurance Code.

A commenter suggested that the following language be added to the end of the "admitted or authorized insurer" definition in §15.2(b)(1): "but does not include a domestic surplus lines insurer, as defined in Insurance Code §981.071." The commenter states it is important to add the language because it will reinforce that a domestic surplus lines insurer is an eligible surplus lines insurer and not an authorized insurer. It will also reinforce that a domestic surplus lines insurer should not be treated as an admitted insurer and subjected to certain taxes, fees, and assessments applicable to the premiums of an admitted insurer.

Agency Response to Comment §15.2(b)(1).

TDI appreciates the comment, but on further analysis has determined that the definition is unnecessary in the context of §15.104(d), which is the only place that the term is used in the proposed rules. The definition of "admitted or authorized insurer" will be deleted from §15.2(b)(1).

Comment on §15.2(b)(6).

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A commenter requested to change the defined term in §15.2(b)(6) from "Stamping Office" to "SLTX" because the industry knows the stamping office as SLTX and because "Stamping Office" is already defined in Insurance Code §981.002(7).

Section 15.2(b)(6) defines "Stamping Office" as "The Surplus Lines Stamping Office of Texas created under Insurance Code Subchapter D, Chapter 981, and operating under a plan of operation as specified by §15.201 of this title. The organization is also commonly referred to as a service office by peer offices throughout the country."

Insurance Code §981.002(7) defines "Stamping Office" as the Surplus Lines Stamping Office of Texas.

Agency Response to Comment §15.2(b)(6).

TDI disagrees with changing the term defined in §15.2(b)(6) from "Stamping Office" to "SLTX." Stamping office is the term defined in Insurance Code §981.002(7) and the rule mirrors the name given by statute.

Comment on §15.3.

A commenter opposed further defining "home state" in §15.3, relating to the regulation of policies. The commenter's concern is that it will cause issues for sole proprietorships if the section states that the principal place of business must not be an individual, unless the intent is for the sole proprietorship to use their principal residence address.

The commenter further recommended adding commas if the rule text as proposed is adopted. Commas are recommended in §15.3(1) around the phrase "that is not an individual" and in §15.3(2) around the phrase "who is an individual" as follows:

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"(1) principal place of business, which is 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; or

"(2) principal residence, which is the state where the insured, who is an individual, resides for the greatest number of days during a calendar year."

Another commenter pointed out a grammatical error and suggests removing the "s" from "directs, controls, and coordinates" so that §15.3 reads:

"...principal place of business, which is the location from which the officers of an insured that is not an individual direct, control, and coordinate the insured's activities..."

Agency Response to Comment §15.3.

The rule text conforms to the NRRA's definition of home state at 15 U.S.C.A. §8206(6)(A)(i) and to the definition of home state in Insurance Code §981.002(5). TDI does not agree that commas need to be inserted because a nonrestrictive clause is set off by commas, but a restrictive clause, which is essential to the meaning of the word being modified, should not be set off by commas. The phrases "that is not an individual" in §15.3(1) and "who is an individual" in §15.3(2) are essential to the word being modified, which is "insured."

TDI agrees the "s" should be removed from "directs, controls, and coordinates."

Comment on §15.5.

A commenter recommends changing the name of the section from "Minimum Content of Contracts" to "Policy Information."

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Agency Response to Comment §15.5.

TDI disagrees with changing the name of the section because the word contract is used throughout Insurance Code Chapter 981.

Comment on §15.5(c).

A commenter recommended two corrections for §15.5(c), relating to the statement that must be included on a domestic surplus lines insurer's new or renewal insurance contract, policy, certificate, cover note, or other confirmation of insurance. First, the reference to a "domestic surplus license insurer" should be changed to a "domestic surplus lines insurer." Second, the reference to "surplus line coverage" in the statement requires the addition of an "s" at the end of "line."

Agency Response to Comment §15.5(c).

TDI agrees and has revised the text as suggested. As adopted, §15.5(c) has been corrected.

Comment on §15.7(a).

Section §15.7(a) reads: "(a) All submissions to the Commissioner or TDI required in this chapter must be sent to the appropriate physical, mailing, or electronic address:

"(1) specified on the applicable TDI form being used; or

"(2) listed on the TDI website for a particular submission."

A commenter recommends adding clarification on whether §15.7, relating to submissions of applications, notices and correspondence, applies to documentation required in the policy files for insured accounts, policy registers or agreements because

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documentation is generally acceptable in any format if it is available for inspection by TDI and the stamping office.

The commenter recommends adding the phrase "except for documentation required for policy files for insured accounts, policy registers, or evidence of agreements, not required in any particular format" at the end of §15.7(a)(1) and striking "a particular" from §15.7(a)(2).

Agency Response to Comment §15.7(a).

TDI disagrees that the section needs clarification. Section 15.7 applies only to applications, notices, and correspondence. Subsection (a) tells the regulated persons where to send applications, notices and correspondence. It does not address the format of the applications, notices and correspondence being sent.

Comment on §15.8.

A commenter recommends changing the name of the section from "Correct Execution Required for Filing" to "Filing Requirements."

Agency Response to Comment §15.8.

TDI agrees and has changed the section name from "Correct Execution Required for Filing" to "Filing Requirements."

Comment on §15.9.

A commenter recommends changing the name of the section from "Eligibility Requirements for Surplus Lines Insurance" to "Becoming an Eligible Insurer."

Agency Response to Comment §15.9.

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TDI agrees and has changed the section name from "Eligibility Requirements for Surplus Lines Insurance" to "Becoming an Eligible Insurer."

Comment on §15.9(b)(1).

Several commenters noted that there was a typo in proposed §15.9(b)(1). The word "license" was used instead of "lines" when referring to an eligible surplus lines insurer.

Agency Response to Comment §15.9(b)(1).

TDI agrees that the word "license" was used instead of "lines" when referring to an eligible surplus lines insurer. TDI has revised the text as suggested.

Comment on §15.102.

A commenter recommends changing the name of the section from "Conduct of an Agent's Business" to "Agent's Permissible Practices."

Agency Response to Comment §15.102.

TDI disagrees with the suggestion to change the name of the section. Section 15.102 discusses what surplus lines agents may or may not do while engaging in the surplus lines business, not just the permissible practices. TDI's position is the section name "Conduct of an Agent's Business" is an accurate description of the section.

Comment on §15.102(b).

A commenter recommends adding the phrase "except when 981.203(a-1) is applicable" to §15.102(b) because without the phrase, the subsection may conflict with the law.

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Agency Response to Comment §15.102(b).

TDI agrees to add the phrase "except when Insurance Code §981.203(a-1) is applicable" to §15.102(b) to avoid confusion. The subsection will now read, in part, "An insurance agent doing business as a partnership, corporation, or limited liability company may apply for and obtain a surplus lines license, provided that the agent meets the qualifications and has been issued a license under the Insurance Code as either a general property and casualty agent or a managing general agent, except when §981.203 (a-1) is applicable"

Comment on §15.103.

A commenter recommends changing the name of the section from "Surplus Lines Stamping Fee" to "SLTX Fee" or "Service Fee."

Agency Response to Comment §15.103.

TDI does not agree to change the name of the section because the statute uses the term "stamping fee." The term is retained so that there is no confusion regarding what is being discussed. While the statutes may not use the common terms that are referenced in industry, it is what TDI is charged with implementing.

Comment on §15.104.

A commenter recommends changing the name of the section from "Duty of Reasonable Effort by Surplus Lines Agents to Ascertain Financial Condition and Other Practices of Eligible Surplus Lines Insurers" to "Reasonable Duty in Placing Coverage."

Agency Response to Comment §15.104.

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TDI agrees and has changed the name of the section from "Duty of Reasonable Effort by Surplus Lines Agents to Ascertain Financial Condition and Other Practices of Eligible Surplus Lines Insurers" to "Reasonable Duty in Placing Coverage."

Comment on §15.104(d).

A commenter suggests adding a few words to §15.104(d). The commenter suggests adding "has the duty and" and "and ... illegally" as shown in the following paragraph. The commenter also suggests striking "International Insurer Department" and referencing just the NAIC instead.

Proposed §15.104(d) states: "A surplus lines agent must immediately inform TDI and the stamping office if the agent has reasonable grounds to believe that an insurer that is not an admitted insurer, an alien insurer listed with the NAIC's International Insurer Department, or an eligible surplus lines insurer is transacting the business of insurance in this state.

Commenter suggests §15.104(d) state: "A surplus lines agent has the duty and must immediately inform TDI and SLTX if the agent has reasonable grounds to believe that an insurer that is not an admitted insurer, an alien insurer listed with the NAIC, or an eligible surplus lines insurer and is illegally transacting the business of insurance in this state."

Another commenter stated that it supports the reference to the NAIC's International Insurer Department in §15.104(d) as it is a known entity addressing the listing of alien insurers, is used in other states, in federal law and in Texas.

Agency Response to Comment §15.104(d).

TDI disagrees with adding "has the duty and." The rule states the surplus lines agent must notify TDI and the stamping office. The word "must" used in the rule means

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that it is mandatory for the surplus lines agent to report, so adding "has the duty and" is not necessary.

TDI disagrees with adding "and ... illegally" because as worded, the surplus lines agent must report if they have reasonable grounds that the types of insurers listed in §15.104(d) are transacting the business of insurance in this state. It does not require the surplus lines agent reach a legal conclusion about the insurance transaction before reporting it to TDI and the stamping office.

TDI will add a comma in §15.104(d) to make the sentence clearer. As adopted, §15.104(d) reads: "A surplus lines agent must immediately inform TDI and the stamping office if the agent has reasonable grounds to believe that an insurer that is not an admitted insurer, an alien insurer listed with the NAIC's International Insurer Department, or an eligible surplus lines insurer, is transacting the business of insurance in this state."

TDI appreciates the support to the reference to the NAIC's International Insurer Department in §15.104(d).

Comment on §15.104(e).

A commenter suggests replacing "may" with "must" in §15.104(e).

Agency Response to Comment §15.104(e).

TDI disagrees that "may" should be changed to "must" in §15.104(e). Section 15.104(e) reads, "A surplus lines agent may place surplus lines insurance on Texas risks with only an eligible insurer that meets the requirements of the Insurance Code and TDI's rules." The word "may" is appropriate here because the surplus lines agent is not under obligation to place surplus lines insurance on Texas risks, but may choose to do so. If the surplus lines agent chooses to do so, the use of the word "only" limits the surplus lines

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agent to place business with an eligible insurer that meets the requirements of the Insurance Code and TDI's rules.

Comment on §15.105.

A commenter recommends changing the name of the section from "Furnishing Evidence of Insurance" to "Evidence of Insurance."

Agency Response to Comment §15.105.

TDI agrees and has changed the name of the section from "Furnishing Evidence of Insurance" to "Evidence of Insurance."

Comment on §15.106.

A commenter recommends changing the name of the section from "Policy Forms Filings and Stamping Office Fees" to "SLTX Filings and Fees."

Agency Response to Comment §15.106.

TDI disagrees with changing the name of the section to ""SLTX Filings and Fees" because the stamping office is not defined as "SLTX" in statute. TDI will change the section name to "Stamping Office Filings and Fees."

Comment on §15.107.

A commenter recommends changing the name of the section from "Surplus Lines Insurance Requests for Information, Examination, and Complaints" to "Requests for Information."

Agency Response to Comment §15.107.

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TDI agrees and has changed the name of the section from "Surplus Lines Insurance Requests for Information, Examination, and Complaints" to "Requests for Information."

Comment on §15.110.

A commenter recommends changing the name of the section from "Contract File" to "Policy File" because state contract file is not common industry terminology.

Agency Response to Comment §15.110.

TDI disagrees to change the name because the section follows the requirements in Insurance Code §981.215(a). Section 981.215(a) refers to maintaining a complete record of each surplus lines contract. The rule uses the same terminology as the statute.

Comment on §15.110.

A commenter recommends that both the stamping office and TDI continue to collect "premium rates." Premium rates were collected under the repealed 28 TAC Chapter 15, but not included in TDI's proposed rule. The commenter also recommends that the rule not request both "gross premium" and "all premiums charged," as they mean the same thing. The commenter also states that "return premium paid, if any" is not a standard term for property and casualty insurance, but rather refers to life insurance.

Agency Response to Comment §15.110.

TDI agrees that both the stamping office and TDI should continue to collect "premium rates." TDI does not agree the rule needs to include premium rates because Insurance Code §981.215(a)(6) requires surplus lines agents to maintain premium rates in

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their records. TDI also agrees that "gross premium" and "all premiums charged" mean the same thing.

TDI disagrees that "return premium paid" is limited to life insurance. Insurance Code §221.002(c)(4) lists return premiums as one of the amounts that is not included in taxable premium for a licensed property and casualty insurer. TDI agrees the rule does not need to include "return premium paid" because Insurance Code §981.215(a)(5) requires surplus lines agents to maintain "the return premium paid" in their records.

TDI appreciates the comments and on further analysis has determined that many of the items in proposed §15.110 repeat those in Insurance Code §981.215(a). The proposed rule will be amended to remove the repeated items. As proposed, §15.110 contained 14 requirements. As adopted, §15.110 contains 11 requirements.

Section 15.110(4) – (6) and (9) are not adopted in the rule text, because they are listed in Insurance Code §981.215(a). Proposed §15.110(5) is not adopted in the rule text because it requests the same information as adopted §15.110(4).

The adopted sections are as follows:

- Section 15.110(1) now contains the requirement that the contract file include a copy of the daily report or other evidence of insurance instead of the requirement being part of the description in §15.110.
- Section 15.110(2) was proposed as §15.110(1). It requires the amount of insurance and perils insured against.
- Section 15.110(3) was proposed as §15.110(2). It requires a brief description of the property insured and its location, including ZIP code.
- Section 15.110(4) was proposed as §15.110(3). It requires the gross premium.

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- Section 15.110(5) was proposed as §15.110(7). It requires the name and mailing address of the insured.
- Section 15.110(6) was proposed as §15.110(8) and requires the name and home office address of the insurer, underwriting syndicate or other-risk bearing entity.
- Section 15.110(7) was proposed as §15.110(10). It requires a record of losses or claims filed and payments due.
- Section 15.110(8) was proposed as §15.110(11). It requires a true and correct copy of the insurance policy, contract, and other detailed evidence of coverage, as issued to the insured.
- Section 15.110(9) was proposed as §15.110(9). It requires all correspondence relating to the specific insurance coverage of that contract file.
- Section 15.110(10) was proposed as §15.110(13). It requires support for the exempt commercial status. The words "if applicable" were deleted and the phrase "complying with Insurance Code §981.215(a)(12)(A) and §15.111 of this title" was added. Exempt commercial purchaser was added by SB 951.
- Section 15.110(11) was proposed as §15.110(13). It requires support for the industrial insured status. The words "if applicable" were deleted and the phrase "complying with Insurance Code §981.215(a)(12)(B) and §15.112 of this title" was added. Industrial insured was added by HB 1559.

Comment on §15.111.

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A commenter recommends changing the name of the section from "Required Documentation Supporting Exempt Commercial Purchaser Status" to "Exempt Commercial Purchaser Documentation."

Agency Response to Comment §15.111.

TDI agrees and has changed the name of the section from "Required Documentation Supporting Exempt Commercial Purchaser Status" to "Exempt Commercial Purchaser Documentation."

Comment on §15.112.

A commenter recommends changing the name of the section from "Required Documentation Supporting Industrial Insured Status" to "Industrial Insured Documentation" as the shorter name presents the same information in a more concise manner.

Agency Response to Comment §15.112.

TDI agrees and has changed the name of the section from "Required Documentation Supporting Industrial Insured Status" to "Industrial Insured Documentation."

Comment on §15.112(1).

A commenter recommends requesting that all requirements listed in Insurance Code §981.004(d) be maintained to support industrial insured status, instead of just Insurance Code §981.004(d)(3).

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Agency Response to Comment §15.112(1).

TDI agrees that compliance with Insurance Code §981.004(d)(2) and (3) should be maintained and will change the rule text. The rule text of §15.112(1) now requires the surplus lines agent to retain documentation supporting compliance with Insurance Code §981.004(d)(2) and (3), not just §981.004(d)(3) because the statute requires evidence of compliance. Section 15.112(1) deletes the phrase "a copy of the document described in Insurance Code §981.004(d)(3)" and replaces it with "compliance with Insurance Code §981.004(d)(2) and (3)."

TDI disagrees that the rule needs to reference all of Insurance Code §981.004(d). Compliance with Insurance Code §981.004(d)(1) is captured under Insurance Code §981.004(d)(3).

Comment on §15.114.

Two commenters stated that it will be difficult to comply with the stricter time lines in §15.114, relating to untimely filed policies and it may also cause an overtax of TDI resources. One commenter stated that the new time frames are not necessary because of the stamping office's new outreach program. The commenter requested to strike §15.114(b)(3) from the rule text and part of §15.114(d).

Proposed §15.114(b)(3) states, "Following receipt of notification described in paragraph (2) of this subsection, on or before the earlier of either 30 days after receipt or March 1, the stamping office must review and research the notification and then provide TDI with a summary as well as the stamping office's 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

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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 must make any necessary changes to its records so that the policy is considered timely filed."

Proposed §115.114(d) states, "Not later than the first business day of April of each year, the stamping office must submit a report to 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 TDI under subsection (b)(3) of this section."

The commenters suggest §115.114(d) delete two parts. The first is the sentence, "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 second is "or determinations made by TDI under subsection (b)(3) of this section."

The commenters suggest §115.114(d) state, "Not later than the first business day of April of each year, the stamping office must submit a report to TDI listing all of the surplus lines policies that were not timely filed in the previous calendar year. 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."

Agency Response to Comment §15.114.

TDI disagrees that there will be an overtax of resources due to the time frames in §15.114. The time frames will require that late policies be reviewed on a rolling basis

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throughout the year instead of coming in all at once at year-end. It will also assist TDI in complying with the Insurance Code §981.105(i). Section 981.105(i) requires that TDI provide notice to each agent of the amount of fees assessed during each calendar year no later than June 15 of the following year.

TDI disagrees that §15.114(b)(3) should be removed from the rule text and disagrees that part of §15.114(d) should be removed because TDI should be notified on a rolling basis of late filers and should be part of the process that determines whether the filing is late or on time.

Under §15.114(b)(2), a surplus lines agent must notify the stamping office if the agent thinks a policy is mistakenly marked late.

Section 15.114(b)(3) requires the stamping office to first review the agent's notification about why the policy identified as late is on time and then to provide TDI with a summary and opinion as to whether the policy should be considered on time. The stamping office has 30 days (or by March 1) from receipt of the agent's notification to get the summary and opinion to TDI. TDI then decides whether the policy should be considered on time and notifies the agent and the stamping office. Section 15.114(d) addresses the year-end report the stamping office submits to TDI and TDI's review of the late filers listed in the report.

Removing §15.114(b)(3) means that TDI will not be notified on a rolling basis of late filings. Additionally, removing §15.114(b)(3) and part of §15.114(d) removes TDI from the process that determines whether a policy was filed late or on time.

Comment on §15.115.

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A commenter recommends changing the name of the section from "Purchase of Insurance by Purchasing Groups through Surplus Lines Agents" to "Surplus Lines Policies for Purchasing Groups."

Agency Response to Comment §15.115.

TDI agrees and has changed the section name from "Purchase of Insurance by Purchasing Groups through Surplus Lines Agents" to "Surplus Lines Policies for Purchasing Groups."

Comment on §15.115(d).

Proposed §15.115(d) reads, "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."

One commenter suggested striking both "registered with TDI" and "[r]egistration may be verified on TDI's website" from the last part of §15.115(d) and suggests it read, "A surplus lines agent may not sell insurance to a purchasing group that is not properly registered."

Agency Response to Comment §15.115(d).

TDI disagrees with the suggestion to strike the end of §15.115(d) and replace it with the language suggested. TDI agrees with the suggestion to leave the text as it was originally proposed by TDI.

A purchasing group in Texas is regulated under Insurance Code Chapter 2201. A Texas surplus lines agent may not sell insurance to a purchasing group if the group is

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required to be registered with TDI and it is not. The agent can verify that the purchasing group is registered by looking on TDI's website.

Comment on §15.115.

One commenter asked if a purchasing group should be regulated in the home state in which the purchasing group is domiciled as opposed to where the individual members principal place of business or residence is located. The commenter suggested adding a new subsection called §15.115(e):

(e) A surplus lines insurance policy, procured through a purchasing group, is subject to Texas regulation, if the insured's home state is Texas, under Insurance Code §981.002(5). The place of business where the purchasing group is domiciled is considered the home state, not the member's individual or business address.

Another commenter recommended §15.115 should not determine a purchasing group's home state to avoid contradicting with the laws in other states and possibly the NRRRA.

Agency Response to Comment §15.115.

TDI disagrees with adding new 15.115(e). A purchasing group in Texas is regulated under Insurance Code Chapter 2201. TDI advises the commenter to review Insurance Code Chapter 2201 Subchapter F to determine the location of the purchasing group.

TDI agrees and will not address a purchasing group's home state.

Comment on §15.301.

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One commenter recommends changing the name of the section from "Eligibility Requirements of Surplus Lines Insurers" to "Evaluation Requirements for Surplus Lines Insurance Coverage."

Agency Response to Comment §15.301.

TDI agrees and has changed the name of the section from "Eligibility Requirements of Surplus Lines Insurers" to "Evaluation Requirements for Surplus Lines Insurance Coverage."

Comment on §15.301(a)(1).

A commenter is concerned with the ability of TDI and the stamping office to monitor compliance of captive insurance companies who are also eligible surplus lines insurers in Texas because the captives are not required to complete property and casualty insurer financial statements on a statutory accounting principles basis or file any financial statements with the NAIC.

The commenter also suggests adding a new subparagraph (D) to §15.301(a)(1) to request that surplus lines insurers in other states make available to TDI and the stamping office: (i) Quarterly and Annual Financial Statements; (ii) Regulatory Examination as completed by states of domicile; (iii) a list of currently used and proposed Texas surplus lines agents; (iv) any other information requested by the Commissioner to verify compliance with §15.301(a) and Insurance Code Chapter 981.

Another commenter stated they agreed with the limitations on items to provide to TDI as proposed in §15.301(a)(1) as §15.301(a)(1) conforms with the NRRA.

Agency Response to Comment §15.301(a)(1).

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TDI disagrees with adding the items requested. First, requesting the information is not in compliance with the NRRRA. Second, the items in (i) and (ii) are already available to TDI. Third, items (iii) and (iv) would add costs to the regulated parties and is not necessary to implement Insurance Code Chapter 981.

TDI agrees proposed §15.301(a)(1) should not be changed.

Comment on §15.301(a)(2).

A commenter pointed out that the Texas Insurance Code and NRRRA states that the IID determines if alien companies are eligible and recommends that the IID filing be made available to TDI and the stamping office. The commenter suggests striking §15.301(a)(2) and replacing it with:

(2) Alien insurers listed with the NAIC's International Insurer Department must make available to TDI and SLTX:

- (A) information regarding the types of insurance the company anticipates writing in Texas;
- (B) a copy of its annual IID filing;
- (C) a contact person located in the United States, including the person's address and phone number. This information may be sent electronically to TDI and SLTX.

Agency Response to Comment §15.301(a)(2).

TDI disagrees that §15.301(a)(2) should be amended. TDI does not have the authority to regulate alien insurers.

Comment on §15.301(b).

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One commenter suggests the rule specify the appropriate application form that a domestic surplus lines insurer must use. The commenter also recommends that the subsection specify the content and timing of domestic surplus lines filings and include some initial and ongoing filing requirements, including time frames. The commenter also asks that the rule address the stamping office's role in the approval of a domestic surplus lines insurer.

The commenter suggests striking §15.301(b) and replacing it. Proposed §15.301(b) states, "Surplus lines insurers designated as a domestic surplus lines insurer by TDI must provide to the stamping office a copy of the domestic surplus lines insurer certificate issued by TDI and documentation that the insurer has capital and surplus required by Insurance Code §981.057."

Commenter suggests §15.301(b) instead state, "Applying for DSLI certificate requires the application to be submitted to TDI and SLTX for review. SLTX must then provide TDI a recommendation for DSLI status."

Agency Response to Comment §15.301(b).

TDI disagrees with striking proposed §15.301(b) and replacing it with the commenter's suggestion. The domestic surplus lines insurer application process, the ongoing filing requirements and timing are not addressed in the proposed rules and is not necessary to implement Insurance Code Chapter 981.

Insurance Code Chapter 981 Subchapter B-1 addresses the requirements for becoming a domestic surplus lines insurer. An applicant that meets the requirements will be designated a domestic surplus lines insurer and issued a domestic surplus lines insurer certificate. A domestic surplus lines agent must comply with Insurance Code Chapter 981 and other applicable laws to maintain eligibility.

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TEXT.

REPEAL OF SUBCHAPTER A.

28 TAC §§15.1 – 15.25.

STATUTORY AUTHORITY. TDI proposes the repeal of §§15.1 – 15.25 under Insurance Code §§981.009, 981.204, and 36.001.

Insurance Code §981.009 provides that the Commissioner may adopt rules to implement Insurance Code Chapter 981 or to satisfy requirements under federal law or regulations.

Insurance Code §981.204 provides that the Commissioner may classify surplus lines agents and issue a surplus lines license to an agent in accordance with a classification created under Insurance Code §981.204 and reasonable rules of the Commissioner.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

TEXT.

§15.1. Effective Date of Rules and Regulations.

§15.2. Definitions.

§15.3. Licensing of Surplus Lines Agents.

§15.4. Notice to Department for Commencement and Cessation of Employment of Individual Surplus Lines Agents.

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§15.5. Sanctions.

§15.6. Conduct of Agent's Business.

§15.7. Eligibility Requirements for Surplus Lines Insurance.

§15.8. Eligibility Requirements of Surplus Lines Insurers.

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

§15.10. Surplus Lines Stamping Fee.

§15.11. Uniformity of Reporting Forms.

§15.12. Surplus Lines Insurance Requests for Information, Examination, and Complaints.

§15.13. Correct Execution Required for Filing.

§15.14. Recordkeeping.

§15.15. Policy Number.

§15.16. Contract File.

§15.17. Agency Accounting Records.

§15.18. Financed Transactions.

§15.19. Allocation of Premium.

§15.20. Reporting of Premium Allocation.

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§15.21. Minimum Content of Contracts.

§15.22. Furnishing Evidence of Insurance.

§15.23. Policy Forms Filings and Stamping Office Fees.

§15.24. Exemption from Minimum Capital and Surplus Requirement.

§15.25. Purchase of Insurance by Purchasing Groups through Surplus Lines Agents.

REPEAL OF SUBCHAPTER B.

28 TAC §15.101.

STATUTORY AUTHORITY. TDI proposes the repeal of §15.1.101 under Insurance Code §§981.009, 981.153, and 36.001.

Insurance Code §981.009 provides that the Commissioner may adopt rules to implement Insurance Code Chapter 981 or to satisfy requirements under federal law or regulations.

Insurance Code §981.153 provides that the procedures to administer the stamping office are established by a plan of operation approved by the Commissioner.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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TEXT.

§15.101. Plan of Operation of the Surplus Lines Stamping Office of Texas.

NEW SUBCHAPTER A.

28 TAC §§15.1 - 15.9.

STATUTORY AUTHORITY. TDI proposes new §§15.1 – 15.9 under Insurance Code §§981.009, 981.204, and 36.001.

Insurance Code §981.009 provides that the Commissioner may adopt rules to implement Insurance Code Chapter 981 or to satisfy requirements under federal law or regulations.

Insurance Code §981.204 provides that the Commissioner may classify surplus lines agents and issue a surplus lines license to an agent in accordance with a classification created under Insurance Code §981.204 and reasonable rules of the Commissioner.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

TEXT.

SUBCHAPTER A. GENERAL PROVISIONS

§15.1. Applicability.

(a) This chapter applies to all surplus lines insurance transactions if Texas is the home state of the insured.

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(b) Texas Department of Insurance rules applicable to licensing, regulation, and supervision of surplus lines agents and surplus lines insurers and transactions in effect before the effective date of an applicable section in this chapter apply in the adjudication of acts and transactions occurring before the effective date of the section.

(c) Section 15.114 of this title is applicable beginning January 1, 2019.

§15.2. Definitions.

(a) The definitions in Insurance Code §981.002 and §981.071 apply to this chapter.

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

(1) 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.

(2) Commissioner--The Texas Commissioner of Insurance.

(3) Comptroller--The office of the Texas Comptroller of Public Accounts.

(4) Person--An individual or entity as defined by Insurance Code §541.002(2).

(5) Stamping Office--The Surplus Lines Stamping Office of Texas created under Insurance Code Subchapter D, Chapter 981, and operating under a plan of operation as specified by §15.201 of this title. The organization is also commonly referred to as a service office by peer offices throughout the country.

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(6) State--Any state, district, commonwealth, territory, and insular possession of the United States and any area subject to the legislative authority of the United States of America.

(7) Surplus lines agent--A person, whether an individual or entity, holding a surplus lines license issued by TDI under Insurance Code Chapter 981.

(8) TDI--Texas Department of Insurance.

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

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

§15.3. Regulation of Policies.

A surplus lines insurance policy is subject to Texas regulation if the insured's home state is Texas. Under Insurance Code §981.002(5), an insured's home state is the insured's:

(1) principal place of business, which is the location from which the officers of an insured that is not an individual direct, control, and coordinate the insured's activities; generally, the insured's main headquarters; or

(2) principal residence, which is the state where the insured who is an individual resides for the greatest number of days during a calendar year.

§15.4. Sanctions.

(a) The Commissioner may impose any sanction or remedy in Insurance Code Chapter 82 or any other applicable laws or statutes if the Commissioner determines, after

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notice and an opportunity for hearing, that the applicant or license holder individually or through any officer, director, or shareholder:

(1) 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 licenses, under the Insurance Code;

(2) failed to allow TDI or 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;

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

(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) Except when Insurance Code §981.203(a-1) applies to a nonresident surplus lines agent, an agent's surplus lines license will not be renewed and the surplus lines agent may not act under the surplus lines agent license if the surplus lines agent fails to maintain or renew the surplus lines 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) A surplus lines agent whose license has been revoked or suspended will not have a license issued, renewed, or a suspension lifted until all fines, penalties, delinquent taxes, and delinquent stamping office fees the agent owes have been paid.

§15.5. Minimum Content of Contracts.

(a) Each new or renewal insurance contract, policy, certificate, cover note, or other confirmation of insurance purchased and delivered as surplus lines coverage under the Insurance Code must contain, at a minimum:

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

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

(3) a stamping fee.

(b) As provided by Insurance Code §981.073(b), Insurance Code §981.101(b) does not apply to a new or renewal insurance contract, policy, certificate, cover note, or other confirmation of insurance purchased and delivered as surplus lines coverage under Insurance Code Chapter 981 if issued by a domestic surplus lines insurer.

(c) Under Insurance Code §981.076, a domestic surplus lines insurer must include with each new or renewal insurance contract, policy, certificate, cover note, or other confirmation of insurance purchased and delivered as surplus lines coverage under the Insurance Code the following statement: "This insurance contract is issued and delivered as surplus lines coverage under the Texas Insurance Code. The insurer is not a member of the property and casualty insurance guaranty association created under Insurance Code Chapter 462. Insurance Code Chapter 225 requires payment of a _____ (insert appropriate tax rate) percent tax on gross premium."

§15.6. Forms.

Applications, reports, and memorandums, required under the Insurance Code and by this chapter relating to surplus lines insurance must include all required information.

§15.7. Submission of Applications, Notices, and Correspondence.

(a) All submissions to the Commissioner or TDI required in this chapter must be sent to the appropriate physical, mailing, or electronic address:

- (1) specified on the applicable TDI form being used; or
- (2) listed on the TDI website for a particular submission.

(b) All submissions to the stamping office required in this chapter must be sent by a method acceptable to the stamping office.

§15.8. Filing Requirements.

(a) No report required to be filed under the Insurance Code or this chapter relating to surplus lines insurance will be deemed filed with TDI or the stamping office unless the documents submitted are correctly completed and signed on forms complying with §15.6 of this title.

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

(c) The surplus lines agent responsible for a filing must maintain the subject contract file, as specified in §15.110 of this title, at the agent's place of business in accordance with §15.108 of this title and must promptly submit the contract file to the

stamping office on request. On mutual agreement, a representative of the stamping office may view the requested contract file at the agent's place of business.

(d) Nothing in this section limits TDI's ability to require the agent to submit information or reports as required by the Insurance Code or this chapter.

§15.9. Becoming an Eligible Insurer.

(a) The stamping office must 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 stamping office must provide the following written reports to TDI:

(1) Within 60 days of discovery, a report documenting any surplus lines insurance policy issued by an insurer that is not an eligible surplus lines insurer, any surplus lines insurance policy and contract that is of a type that is not compliant with the Insurance Code, and any act that requires a license that is performed by an unlicensed person.

(2) Promptly upon discovery, a report documenting any surplus lines insurance policy or contract that has uncorrected administrative or technical errors that the stamping office has asked the surplus lines agent to correct.

PROPOSED NEW SUBCHAPTER B.**28 TAC §§15.101 – 15.115.**

STATUTORY AUTHORITY. TDI proposes new §§15.101 – 15.115 under Insurance Code §§981.009, 981.204, and 36.001.

Insurance Code §981.009 provides that the Commissioner may adopt rules to implement Insurance Code Chapter 981 or to satisfy requirements under federal law or regulations.

Insurance Code §981.204 provides that the Commissioner may classify surplus lines agents and issue a surplus lines license to an agent in accordance with a classification created under this Insurance Code §981.204 and reasonable rules of the Commissioner.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

TEXT.**SUBCHAPTER B. SURPLUS LINES AGENTS****§15.101. Licensing of Surplus Lines Agents.**

(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;

(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

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policies or contracts, except for a general lines property and casualty agent making a referral of surplus lines business to a surplus lines agent 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 that then completes the surplus lines transaction.

(b) The following activities, if supervised by a surplus lines agent, do not require a surplus lines agent license if the employee does not receive any direct commission from selling, soliciting, binding, effecting, or procuring insurance policies, contracts, or coverages, and 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;

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

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(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 TDI issues a surplus lines agent license, the applicant 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.

(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 TDI, must meet all licensing requirements set forth in Insurance Code Chapter 981. Nonresident applicants under this section must also comply with Insurance Code §4056.051.

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

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(h) Each surplus lines agent license issued to an agent will be valid for a term as established under Insurance Code §4003.001 and Chapter 19, Subchapter I of this title. 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.

§15.102. Conduct of Agent's Business.

(a) A surplus lines agent engaging in surplus lines 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 license. A surplus lines agent engaging in surplus lines business under an assumed name must comply with §19.902 of this title.

(b) An insurance agent doing business as a partnership, corporation, or limited liability company may apply for and obtain a surplus lines license, provided that the agent meets the qualifications and has been issued a license under the Insurance Code as either a general property and casualty agent or a managing general agent, except when Insurance Code §981.203(a-1) is applicable. The surplus lines agent license will 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 license. A partnership, corporation, or limited liability company doing business under an assumed name must comply with §19.902 of this title.

(c) Every act in placing or servicing a surplus lines insurance contract under an assumed name must also clearly disclose the true name of the surplus lines agent acting under the assumed name, or the true name of the individual licensed surplus lines agent

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representing the surplus lines agency, partnership, corporation, or limited liability company acting under the assumed name.

(d) A surplus lines agent may not 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 may not file with the stamping office a policy 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 including payment of any fees owed and any penalties assessed 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 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 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 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 authority. A Texas-licensed adjuster must perform all claims adjustments unless the policy covers risks in multiple states and the

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claim is for a loss on a non-Texas risk. The written agreement must be available for review by TDI.

(1) 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.

(2) 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 the insurer authorizes the direct payments. This written agreement must be available for review by TDI.

§15.103. Surplus Lines Stamping Fee.

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 fees are due and payable as provided in §15.106 of this title.

§15.104. Reasonable Duty in Placing Coverage.

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

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(b) During the course of placing coverage with an eligible surplus lines insurer, each surplus lines agent will 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 immediately inform TDI and the stamping office if 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 TDI and the stamping office if the agent has reasonable grounds to believe that an insurer that is not an admitted insurer, an alien insurer listed with the NAIC's International Insurer Department, or an eligible surplus lines insurer, is transacting the business of insurance in this state.

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

§15.105. Evidence of Insurance.

(a) A surplus lines agent must promptly provide the insured or the client's agent with written evidence of insurance containing complete terms, conditions, and exclusions pertaining to the coverage 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 temporary confirmation must 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 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 promptly send to the insured or the insured's agent a substitute certificate, cover note, confirmation, or endorsement for the original. All substitute documents must accurately show the current status of the coverage and the responsible insurers.

§15.106. Stamping Office Filing and Fees.

(a) The surplus lines agent must file a true and correct copy of each executed surplus lines policy, contract, or other detailed evidence of coverage, including additions, deletions, or cancellations with the stamping office within 60 days of issuance or the effective date, whichever is later. If evidence of coverage other than the policy is initially filed, a copy of the policy must be filed with the stamping office within 60 days after it becomes available.

(b) For purposes of reporting to the stamping office, the term "true and correct copy of a surplus lines insurance policy" as used in this section, includes:

- (1) a declarations page;
- (2) a listing of all participating insurers on the policy;
- (3) all coverage parts and schedules, including limits;
- (4) extended coverage exclusions;
- (5) all premium-bearing documents;
- (6) risk ZIP code location; and

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

(c) The stamping office must compile information from the filings submitted under subsection (b) of this section on a surplus lines agent basis within 10 days after the end of each month. The reports will be provided to the surplus lines agent with a notice of the total stamping fees due. The surplus lines agent must pay the fees to the stamping office by the end of the month in which the surplus lines agent receives the notice.

§15.107. Requests for Information.

(a) In addition to those documents required to be filed under §15.106 and §15.301 of this title, the stamping office may request a surplus lines agent to submit additional information necessary to evaluate the eligibility of surplus lines policies, contracts, or other detailed evidence of coverage.

(b) The stamping office must issue a written report to TDI if the requested additional information is not timely submitted by the surplus lines agent.

(c) The stamping office and the surplus lines agent may mutually agree for a representative of the stamping office to review the requested information at the surplus lines agent's place of business.

(d) Nothing in this section limits TDI's ability to require the surplus lines agent to submit information or reports as required by the Insurance Code and this chapter.

§15.108. Recordkeeping.

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

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(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 other insurance and accounting records as are necessary to properly and promptly service Texas policyholders and provide required information to TDI.

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

§15.109. Policy Number.

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

(b) For agents having authority to issue policies on behalf of an eligible surplus lines insurer, 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.

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Each surplus lines agent must maintain a contract file containing a complete and true record for each individual surplus lines contract including the items described under Insurance Code §981.215(a) and the following, as applicable:

- (1) a copy of the daily report or other evidence of insurance;
- (2) amount of insurance and perils insured against;
- (3) brief general description of the property insured and its location, including ZIP code;
- (4) gross premium;
- (5) name and mailing address of the insured;
- (6) name and home office address of the insurer, underwriting syndicate or other risk-bearing entity;
- (7) record of losses or claims filed and payments made;
- (8) a true and correct copy of the insurance policy, contract, and other detailed evidences of coverage, as issued to the insured;
- (9) all correspondence relating to the specific insurance coverage of that contract file;
- (10) support for exempt commercial purchaser status complying with Insurance Code §981.215(a)(12)(A) and §15.111 of this title; and
- (11) support for the industrial insured status complying with Insurance Code §981.215(a)(12)(B) and §15.112 of this title.

§15.111. Exempt Commercial Purchaser Documentation.

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.

§15.112. Industrial Insured Documentation.

Support for industrial insured status must include documentation of the following:

(1) compliance with Insurance Code §981.004(d)(2) and (3); and

(2) a signed statement from the insured identifying which provisions of Insurance Code and §981.0032(3) and §981.0033(2) are applicable to the insured.

§15.113. Agent Accounting Records.

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

(b) The surplus lines agent's general accounting records must show a month-end summary of operations and fiscal or calendar-year-to-date summary of operations, and must be maintained in accordance with generally accepted accounting principles.

§15.114. Untimely Filed Policies.

(a) On or before the 15th day of each month, the stamping office must 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. The surplus lines agent is responsible for confirming the accuracy of the report.

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

(1) correct any errors in the record using electronic procedures established by the stamping office, or

(2) if the error in the record cannot be corrected using electronic procedures established by the stamping office, 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) Following receipt of notification described in paragraph (2) of this subsection, on or before the earlier of either 30 days after receipt or March 1, the stamping office must review and research the notification and then provide TDI with a summary as well as the stamping office's 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 must 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 if the agent fails to comply with the requirements of subsection (b) of this section.

(d) Not later than the first business day of April of each year, the stamping office must submit a report to TDI listing all surplus lines policies that were not timely filed in

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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 TDI under subsection (b)(3) of this section.

§15.115. Surplus Lines Policies for Purchasing Groups.

(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 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 any related, similar, or common business, trade, product, service, premise, or operation; and

(4) is domiciled in any state.

(b) When a registered purchasing group purchases insurance through a surplus lines agent, the surplus lines agent must submit the filings required under Insurance Code §981.105 and stamping fees directly to the stamping office.

(c) A surplus lines agent must stamp or write the words "Purchasing Group" conspicuously on every policy, contract, or other detailed evidence of coverage issued to a purchasing group or its members through the surplus lines agent.

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(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.

PROPOSED NEW SUBCHAPTER C.

28 TAC §15.201.

STATUTORY AUTHORITY. TDI proposes new §15.1.201 under Insurance Code §981.009 and §36.001.

Insurance Code §981.009 provides that the Commissioner may adopt rules to implement Insurance Code Chapter 981 or to satisfy requirements under federal law or regulations.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

TEXT.

SUBCHAPTER C. SURPLUS LINES STAMPING OFFICE OF TEXAS PLAN OF OPERATION

§15.201. Commissioner Approval.

(a) The stamping office's plan of operation (plan of operation) and any amendment to it become effective on written approval by Commissioner order, and constitute the manner in which the stamping office must operate and discharge its responsibilities in accordance with the Insurance Code and TDI's rules.

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

(1) The Commissioner may accept or reject some or all of the proposed amendments.

(2) TDI will provide public notice and an opportunity to comment on some or all of the proposed amendments.

(3) The Commissioner will approve amendments to the plan of operation by Commissioner order.

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

(d) The stamping office must 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 comment period and review of the comments, the Commissioner will either approve or deny changing the stamping fee by order.

PROPOSED NEW SUBCHAPTER D.

28 TAC §15.301.

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STATUTORY AUTHORITY. TDI proposes §15.1.301 under Insurance Code §§981.009, 981.153, and 36.001.

Insurance Code §981.009 provides that the Commissioner may adopt rules to implement Insurance Code Chapter 981 or to satisfy requirements under federal law or regulations.

Insurance Code §981.153 provides that the procedures to administer the stamping office are established by a plan of operation approved by the Commissioner.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

TEXT.

SUBCHAPTER D. SURPLUS LINES INSURERS

§15.301. Evaluation Requirements of Surplus Lines Insurance Coverage.

(a) Surplus lines insurers not designated as a domestic surplus lines insurer by TDI must provide to TDI and to the stamping office information relating to the insurer's eligibility to write surplus lines insurance.

(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. Documentation must include:

(A) insurer information, including the insurer's:

(i) full name;

(ii) physical address for its principal place of business;

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(iii) mailing address;
(iv) NAIC number; and
(v) contact individual's name, phone number, and email;
(B) the state in which they are domiciled;
(C) a list of all lines and classifications of insurance business the applicant is authorized to insure or reinsure.

(2) Alien insurers listed with the NAIC's International Insurer 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.

(b) Surplus lines insurers designated as a domestic surplus lines insurer by TDI must provide to the stamping office a copy of the domestic surplus lines insurer certificate issued by TDI and documentation that the insurer has capital and surplus required by Insurance Code §981.057.

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on December 7, 2018.

/s/ Norma Garcia
Norma Garcia
General Counsel
Texas Department of Insurance

2018-5737

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 15. Surplus Lines Insurance

Repealed and Adopted Sections

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The Commissioner adopts the repeal of 28 TAC Chapter 15 and new 28 TAC Chapter 15.

/s/ Kent C. Sullivan _____

Kent C. Sullivan

Commissioner of Insurance

COMMISSIONER'S ORDER NO. **2018-5737**