

# DEPARTMENT OF INSURANCE

## OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 314 (18 **Del.C.** §314)  
18 **DE Admin. Code** 1101

### FINAL

#### REGULATORY IMPLEMENTING ORDER

##### 1101 Listed Surplus Lines Carriers Intending to Establish an Office in Delaware

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the August 1, 2019 edition of the *Register of Regulations* at **23 DE Reg. 102**, the Commissioner of the Delaware Department of Insurance (Commissioner) published a proposed public notice to repeal existing Regulation 1101, Listed Surplus Lines Carriers Intending to Establish an Office in Delaware [Formerly Regulation 4], and solicited written comments from the public for thirty (30) days as mandated by the Administrative Procedures Act at 29 **Del.C.** §10118(a).

As discussed in the introductory paragraphs of the proposal to repeal, prior to the surplus lines laws being amended to adopt the Nonadmitted and Reinsurance Reform Act in 2011, there was a provision in Delaware Code Title 18 at Chapter 19 that allowed an eligible surplus lines insurer to maintain a Delaware office in accordance with rules and regulations established by the Commissioner (prior 18 **Del.C.** §1907(c)). In accordance with former Section 1907(c), Regulation 1101 was promulgated to set forth requirements for maintaining an office in Delaware.

In addition to publishing the proposal in the *Register of Regulations*, the Department also published the proposal on its website at <http://insurance.delaware.gov/information/proposedregs/>. The Department did not hold a public hearing on the proposed repeal.

The Department received one public comment on the proposal, in which the commenter questioned whether it is accurate to say that the repeal of 18 **DE Admin. Code** 1101 is not expected or intended to create or eliminate any permitted activity, and whether there any possible implication on the ability of a domestic surplus lines insurer to establish/maintain an office in Delaware. The response is that the statement is accurate. There is nothing in the current Chapter 19 that addresses or would otherwise prohibit an eligible surplus lines insurer from establishing offices in this State to administer the business.

#### II. FINDINGS OF FACTS

1. Regulation 1101, Surplus Lines, should be repealed.
2. The Department met the public notice requirements of the Administrative Procedures Act.
3. The Department received one (1) public comment on the proposed repeal as reference above.

#### III. DECISION TO REPEAL REGULATION 1101

For the foregoing reasons, the Commissioner concludes that it is appropriate to repeal 18 **DE Admin. Code** 1101, as discussed in the above Findings of Fact, for the reasons set forth above and in the proposal to repeal.

#### V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §314 on the date indicated below. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

IT IS SO ORDERED,

This 10<sup>th</sup> day of September, 2019.

Trinidad Navarro  
Commissioner  
Delaware Department of Insurance

1100 Reserved

~~1101 Listed Surplus Lines Carriers Intending to Establish an Office in Delaware~~

#### **4.0 Authority and scope**

Pursuant to 18 ~~Del.C.~~ §314, the following rules and regulations are hereby promulgated and adopted. They are applicable to all surplus lines insurers who wish to establish offices in this State.

#### **2.0 ~~No surplus lines insurer may maintain an office in Delaware pursuant to 18 Del.C. §1907(c) until:~~**

- 2.1 ~~The insurer is declared eligible to write surplus lines coverages in Delaware pursuant to 18 Del.C. §1907(b); and~~
- 2.2 ~~The insurer has been authorized by the Commissioner to establish a Delaware office.~~
- 2.3 ~~An eligible surplus lines insurer desiring to establish an office in Delaware shall apply to the Commissioner for authorization. In the application, the insurer shall:~~
  - 2.3.1 ~~State the address of the Delaware office and the name and residence address of the person regularly in charge of that office.~~
  - 2.3.2 ~~Specify whether the insurer's business at the Delaware office is to be managed by an independent agent or other person not directly employed by the insurer, and if so, the insurer shall state the name and address of the managing agent, and summarize the salient terms of the management agreement.~~
  - 2.3.3 ~~Describe the surplus lines coverages proposed to be offered through the Delaware office, including kinds or types of coverage or risks, and the limits of liability to be assumed under each.~~
  - 2.3.4 ~~State the ratio to be maintained between premium writings and the value of the trust funds established by the insurer for the benefit of its United States policyholders.~~
  - 2.3.5 ~~Certify that the insurer will issue insurance coverage to the public only through duly licensed surplus lines brokers in accordance with the surplus lines laws and regulations of this State, and the applicable laws and regulations of other states where the insurer may lawfully do business on a surplus lines basis.~~
  - 2.3.6 ~~Agree to maintain books and records at the Delaware office which accurately reflect all business affairs conducted at that office.~~
  - 2.3.7 ~~Authorize the Commissioner to inspect the books, records, and affairs of the insurer as often as the Commissioner reasonably deems advisable in order to determine the nature and extent of business conducted by the insurer at its Delaware office.~~
- 2.4 ~~Upon receipt of notice that the Commissioner does not object to the application, the insurer may establish a Delaware office. However, the insurer shall not operate the office for any purpose until it deposits not less than \$50,000.00 with the Commissioner (in registered bonds, or funds in other form satisfactory to the Commissioner) for the benefit of its policyholders and creditors.~~
- 2.5 ~~Within sixty days after end of its fiscal year, every insurer maintaining a Delaware office pursuant to 18 Del.C. §1907(c) shall submit a report summarizing the nature and extent of business conducted during the past year by the Delaware office, and the nature and extent of business proposed to be conducted by that office during the ensuing year. In a separate section denominated "Changes," the report must specify any change or proposed change in method of operation which departs from the representations made in the application to establish the Delaware office.~~