



November 17, 2016

BULLETIN #1339

RE: EXPORT LIST HEARING SCHEDULED FOR DECEMBER 16, 2016

The California Department of Insurance (CDI) is planning to hold its annual public hearing on the Export List on Friday, December 16, 2016, at 10:00 a.m. The hearing will take place at the CDI's San Francisco hearing room, 45 Fremont Street, 22nd Floor. At this hearing, the CDI will take testimony on the Export List.

Attached is the CDI's formal hearing notice and a current copy of the Export List for your review.

To Testify At The Hearing

If you wish to advocate in person at the CDI hearing for an addition to or deletion from the Export List, please notify the SLA by **Friday, December 2, 2016**. Specifically, to advocate for an addition, you must provide firsthand, written testimony verifying that the coverage is generally unavailable in the admitted market. In addition, please provide written declinations from admitted carriers stating that they are unwilling to underwrite policies for the specific coverage or risk. The evidence must convince the CDI that the broker has surveyed the entire spectrum of California admitted carriers known for insuring the risk. To advocate for a deletion, you must provide firsthand, written testimony that the coverage is available in the admitted market.

To Have The SLA Testify On Your Behalf

The SLA will be presenting information at the annual CDI Export List hearing. The SLA may also testify on your behalf at the CDI hearing if so desired. The standards for having the SLA testify on your behalf, either for an addition to the export list or a deletion from it, are the same as noted above for those who wish to testify in person.

If you wish the SLA to present a request on your behalf in its testimony, then please send any Export List request and substantiating documentation to Benjamin J. McKay, SLA Executive Director, by **Friday, December 2, 2016** at bmckay@slacal.org.

For your reference, the full Rule of Exportability can be found on the following page.

Sincerely,

Benjamin J. McKay, J.D., M.P.A.
Executive Director
Surplus Line Association of California

Rule of Exportability

The term exportability refers to what business a surplus line broker can “export” to the surplus line market versus what business should be placed in the admitted market. There are essentially two criteria that determine what business is eligible to be exported: availability and price.

1. Availability: Insurance that can be procured from admitted insurers may not be exported to the surplus line market. Admitted insurers generally accept the more straightforward risks that lend themselves to using standard form policies and standardized rating manuals.

The law requires a surplus line broker to ensure that a diligent search for the coverage is made among admitted insurers. Recognizing that it would place an unreasonable burden on consumers if insurance producers were required to submit risks to every admitted insurer to determine unavailability, the law considers declinations from three admitted insurers that actually write the particular type of insurance to be “prima facie evidence” of unavailability.

Additionally, the Insurance Commissioner publishes a list, called the “Export List,” of risks and coverages for which the Commissioner has found no reasonable or adequate market among admitted insurers. Risks and coverages on the export list are deemed to be unavailable and may be exported without any declinations.

2. Price: Exportation to obtain a lower rate or premium is prohibited. If the insurance product is available in the admitted market, it must be purchased in the admitted market even if the same product could be procured at a lower rate in the surplus line market. For exceptions, refer to Insurance Code [Section 1763\(c\)](#).

Statutory References: California Insurance Code §§ [1763](#) and [1763.1](#).

NOTICE OF PUBLIC HEARING REGARDING EXPORT LIST

NOTICE IS HEREBY GIVEN that the Insurance Commissioner of the State of California will hold a public hearing, at the time and place set forth below, concerning the renewal of the export list in the surplus lines area.

December 16, 2016

10:00 a.m.

Department of Insurance

45 Fremont Street, 22nd Floor

San Francisco, California 94105

THE HEARING ROOM IS ACCESSIBLE TO PERSONS WITH MOBILITY IMPAIRMENTS. IF ACCOMMODATIONS NEED TO BE MADE FOR OTHER DISABILITIES, SUCH AS HEARING IMPAIRMENT, PLEASE PHONE THE CONTACT PERSON LISTED IN THIS NOTICE BY DECEMBER 9 SO ARRANGEMENTS CAN BE MADE.

EXPORT LIST

Pursuant to Insurance Code Section 1763.1, the Commissioner may by order declare permissible for placement for a California home state insured with a nonadmitted insurer and exempt from all the requirements of Section 1763, except the filing of a confidential written report, any type of insurance coverage or risk for which he or she finds after a public hearing that there is not a reasonable or adequate market among admitted insurers.

Pursuant to this mandate, the Commissioner has previously collected information on whether or not there is a reasonable or adequate market among admitted insurers for certain risks or coverages. The Department reviewed the export lists in other states. We contacted California surplus line brokers and surveyed them as to the risks most placed by them. We received industry input from admitted carriers and through the Surplus Line Association. We also have held annual public hearings and solicited public comment from all interested parties including surplus line brokers, admitted insurers, trade associations representing admitted insurers, agents and brokers, and consumer groups to provide us with evidence of a lack of a reasonable or adequate market amongst admitted carriers for a particular risk or coverage. After this process, the Department adopted the attached EXPORT LIST.

RENEWAL

Pursuant to Insurance Code Section 1763.1 a public hearing shall be held annually regarding the export list. The above noticed hearing is being set to take testimony on the export list to see if any items should be added or removed.

In preparing your comments and/or testimony please be aware that items not appearing on this list will still be exportable but subject to the full documentation of the search being performed pursuant to Insurance Code Section 1763.

HEARING AND WRITTEN TESTIMONY

As stated before, this hearing is public and interested parties may testify as time permits. The hearing will be structured with time and place priority afforded to those who have signed up in advance to speak. If you wish to sign up in advance to speak, submit your written request to the contact person listed below. There is a possibility that there may be a request to add some standalone commercial other liability cyber products to the Export List.

PLEASE BE AWARE THAT IN ORDER FOR THE COMMISSIONER TO CONSIDER ADDING A RISK OR COVERAGE TO THE EXPORT LIST, THE COMMISSIONER MUST HAVE EVIDENCE THAT THERE IS NOT AN ADEQUATE OR REASONABLE MARKET FOR THE RISK OR COVERAGE IN THE ADMITTED MARKET. SUBMISSION OF A STATEMENT SIMPLY REQUESTING A RISK OR COVERAGE TO BE ADDED TO THE LIST WITHOUT OTHER SUPPORTING EVIDENCE OF THE LACK OF AN ADEQUATE OR REASONABLE ADMITTED MARKET WILL NOT BE ENOUGH FOR THE COMMISSIONER TO ADD A RISK OR COVERAGE TO THE LIST.

All written testimony, comments, or documents must be sent to the Department of Insurance in triplicate (original and two copies) and received by the Department of Insurance at the address given below no later than 5:00 p.m. on December 16, 2016. All written testimony received at the hearings will be considered part of the hearing record. The Department of Insurance will not accept any written testimony, comments, or documents which are transmitted to it by facsimile.

Please direct any questions regarding this notice, opportunities to testify, and written submissions for the record, to: Carol Frair, Asst. Chief Counsel, California Department of Insurance, 45 Fremont Street, 24th Floor, San Francisco, CA 94105, (415) 538-4408.

DATED: November 14, 2016

DAVE JONES
Insurance Commissioner

By  Carol F. Frair, Asst. Chief Counsel CAB

EXPORT LIST 2016

ACCIDENT/ DISABILITY

BRIDGE PLAN
HIGH LIMITS DISABILITY
INTERNATIONAL MAJOR MEDICAL

AUTOMOBILES

EXOTIC/CLASSIC/ANTIQUE AUTOS WITH A VALUE IN EXCESS OF \$100,000

AVIATION

AVIATION EXCESS LIABILITY
SHORT TERM MEDIA/ENTERTAINMENT NON-OWNED CONTINGENT AIRCRAFT
LIABILITY (FILM/ENTERTAINMENT PRODUCTIONS)

CRIME

EXCESS CRIME
KIDNAP & RANSOM

FIRE & ALLIED LINES

AMUSEMENT PARKS/ CARNIVALS AND AMUSEMENT DEVICES
COMMERCIAL DIC/STANDALONE EARTHQUAKE
DISASTER INCOME PROTECTION
EXCESS FLOOD
EXPLOSIVE MANUFACTURING/SALES/STORAGE
HAY IN THE OPEN
HOMEOWNERS EARTHQUAKE/EXCESS LIMITS OR DEDUCTIBLE BUYBACK
INDIVIDUAL INSUREDS WITH LARGE SCHEDULES WHERE THE TIV (TOTAL
INSURED VALUES) ARE IN EXCESS OF \$500 MILLION
SAWMILLS
VACANT BUILDINGS

GENERAL LIABILITY

AMBULANCE SERVICES INCLUDING PROFESSIONAL LIABILITY
AMUSEMENT PARKS/CARNIVALS/DEVICES
BLASTING CONTRACTORS

BUILDING MOVING

CLINICAL AND SIMILAR TESTS OF PHARMACEUTICAL, MEDICAL, BIOLOGICAL
& OTHER SIMILAR PRODUCTS

CONTRACTORS ENGAGED IN CONSTRUCTION OF NEW TRACT HOMES
AND/OR NEW CONDOMINIUMS

CRANE & RIGGING CONTRACTORS

DEMOLITION CONTRACTORS

EMPLOYMENT PRACTICES LIABILITY

ENVIRONMENTAL IMPAIRMENT REMEDIATION AND POLLUTION LIABILITY

EXCESS LIABILITY WHERE PART OF UNDERLYING IS NONADMITTED

EXPLOSIVES INCLUDING MANUFACTURING/SALES/STORAGE

FIREWORKS DISPLAYS

FOSTER FAMILY (OCCURRENCE BASED ONLY)

HOT AIR BALLOON

LIMITS THAT ATTACH IN EXCESS OF \$150 MILLION

OILFIELD CONTRACTORS

OUTFITTERS AND GUIDES

PATENT/TRADEMARK/COPYRIGHT INFRINGEMENT

PRODUCTS RECALL

PRODUCTS/COMPLETED OPERATIONS (WRITTEN ON A STAND ALONE BASIS)

SEASONAL OR MOBILE FAIRS, CONCESSIONAIRES, VENDORS AND FAIRS,
WITH OR WITHOUT LIQUOR LIABILITY

SECURITY GUARD SERVICES

SHORT TERM MEDIA/ENTERTAINMENT RAILROAD PROTECTIVE LIABILITY
(FILM/ENTERTAINMENT PRODUCTIONS)

SHORT TERM SPECIAL EVENTS (EXCLUDING HOLE-IN-ONE)

TATTOO AND BODY PIERCING SHOPS

INLAND MARINE

ALL VESSELS IN EXCESS OF 30 FEET AND RATED WITH A MAXIMUM SPEED OF
45 MPH

ANY VESSEL WITH A MAXIMUM RATED SPEED IN EXCESS OF 55 MPH

EXCESS MOTOR TRUCK CARGO

PERSONAL ARTICLES FLOATERS WRITTEN ON A STAND ALONE BASIS
WHERE THE VALUE OF THE SCHEDULE IS IN EXCESS OF \$1M OR CONTAINS
A SINGLE ITEM(S) OVER \$100,000

MISCELLANEOUS

EVENT CANCELLATION

POLITICAL RISKS INCLUDING EXPROPRIATION, CONFISCATION, UNFAIR CALLING

PRIZE INDEMNIFICATION (EXCLUDING HOLE-IN-ONE COVERAGE)

SHORT TERM MEDIA/ENTERTAINMENT FAILURE TO SURVIVE FOR \$5 MILLION AND OVER (FILM/ENTERTAINMENT PRODUCTIONS)

PROFESSIONAL LIABILITY /ERRORS & OMISSION

ARCHITECTS & ENGINEERS/CONDO COVERAGE ONLY

CAMPAIGN TREASURERS

CREDITORS' COMMITTEES

PHYSICIAN/MEDICAL GROUP/HOSPITAL BILLING E/O

TATTOO & BODY PIERCING SHOPS E/O

* The Bridge Plan covers 65 year old people who must wait a certain period before they can enroll in Medicare. These people either 1) failed to meet the residency requirement of Medicare and must wait 5 years to *meet* the residency requirement or 2) failed to enroll during the proper Medicare enrollment period and now must wait a brief period before they are eligible to enroll.

** High Limits Disability is coverage that offers benefit amounts over the admitted market maximum issue and participation limits and/or includes occupations which are not eligible.