

Locke Lord

Excess and Surplus Lines Laws Manual

**Including Direct Procurement Tax Laws
and Industrial Insured Exemptions**

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UPDATED MANUAL

Please find enclosed the 2022 update to the Locke Lord LLP Excess and Surplus Lines Law Manual.

This is a completely updated version and should replace in entirety any previous version that you may have.

This manual is also available on our firm's website at <http://surplusmanual.lockelord.com>, and in PDF format. If you would like to receive a PDF version of this manual, please email surpluslines@lockelord.com.

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Locke Lord is pleased to present this 22nd edition of the Surplus Lines Manual for 2022.

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PREFACE

THE NRRA TODAY

The Nonadmitted and Reinsurance Reform Act (“NRRA”) came into effect on July 21, 2011 as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The purpose of the NRRA was to create a more simplified and efficient surplus lines tax payment and regulatory system by limiting regulatory authority of surplus lines transactions to the home state of the insured and by establishing federal standards for the collection of surplus lines premium taxes, insurer eligibility, and commercial purchaser exemptions.

To date, all states, except Michigan and Washington DC, have enacted legislation to implement the NRRA although both jurisdictions continue to comply with the NRRA’s home state tax approach. These state laws focus on surplus lines premium taxation, which is the most challenging compliance issue for both brokers and state regulators. In addition to the tax issue, most of the states have attempted to conform their laws to the other issues addressed by the NRRA, including the exempt commercial purchaser exemption and surplus lines insurer eligibility standards. However, even if a state has not taken appropriate action, the NRRA standards still apply. Therefore, surplus lines brokers must look to both the NRRA and the laws of the home state of the insured to determine what they need to do to comply with all applicable rules under NRRA.

What follows is a summary of the key provisions of the NRRA and its impact on the current regulation of surplus lines insurance in the United States.

ONE-STATE COMPLIANCE

The NRRA grants the insured’s home state with exclusive authority to regulate placement of nonadmitted insurance. The federal act states that no state, other than an insured’s home state, may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate non-admitted insurance with respect to such insured. In addition, the NRRA explicitly provides for the preemption of laws, regulations, provisions, or actions of any state that applies to nonadmitted insurance sold, solicited by, or negotiated with an insured whose home state is another state. This preemption, however, does not extend to workers’ compensation insurance and any law, rule or regulation that prohibits placement of workers’ compensation or excess insurance for self-funded workers’ compensation plans with a nonadmitted insurer.

Under the federal act, only the insured’s home state is permitted to collect premium taxes for nonadmitted insurance. All other states are preempted from applying their surplus lines laws to such transactions. As defined in the NRRA, “home state” means: (i) the state in which an insured maintains its principal place of business or in the case of an individual, the individual’s principal residence; or (ii) if 100 percent of the insured risk is located out of the state referred to in clause (i), the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

To facilitate the payment of premium taxes among the states, the NRRA also allows an insured’s home state to require surplus lines brokers as well as insureds who have independently procured insurance to file annual tax allocation reports with the insured’s home state detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks, or exposures located in each state.

UNIFORM STANDARDS FOR SURPLUS LINES ELIGIBILITY

The NRRA empowers the states to create uniform national requirements, forms and procedures for insurer eligibility for U.S. domiciled (foreign) surplus lines insurers. As the states have yet to adopt a nationwide eligibility standard, the default standards established under the NRRA are now in effect in all states. Specifically, a U.S. domiciled surplus lines insurer needs to meet two substantive requirements under the NAIC Non-admitted Insurance Model Act, i.e., 1) maintain capital and surplus of at least \$15 million (or the minimum capital and surplus requirement under the law of the insured's home state if higher); and 2) be "authorized to write in its domiciliary jurisdiction."

With respect to alien (non-U.S.) surplus lines insurers, states may not prohibit a surplus lines broker from placing non-admitted insurance with, or procuring non-admitted insurance from, a non-U.S., non-admitted insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC's International Insurer's Department ("IID List").

While most states have now amended their surplus lines laws to incorporate the NRRA requirements, a number of state regulators are continuing to request financial and/or premium information as well as a fee in order to include that company on their state's eligibility list. While these lists are "voluntary", many surplus lines carriers have opted to participate as they believe their absence from an eligibility list places them at a commercial disadvantage in the market. Moreover, some states continue to expect that surplus lines insurers will maintain listing on their eligibility lists and/or "federally authorized" lists and, at times, have refused to accept surplus lines premium tax remittance from surplus lines brokers placing insurance coverage through insurance carriers that have not obtained admission thereon. We expect the states requiring these additional submissions will diminish in time as they begin to rely more on the financial information that is now available for reference and download from the NAIC website.

EXEMPT COMMERCIAL PURCHASERS (ECP'S)

The NRRA preempts any state laws or regulations requiring a surplus lines broker seeking to procure or place nonadmitted insurance for certain sophisticated commercial purchasers¹ to satisfy diligent search requirements if the broker: (1) has disclosed to the purchaser that such insurance may be available from the admitted market which may provide greater protection with more regulatory oversight; and (2) the purchaser has subsequently requested in writing the broker to procure from or place such insurance with a nonadmitted insurer. States which have export lists will likely treat ECP's as an additional category of the export list. These transactions will still have to be reported in the home state of the insured as only the diligent effort requirement is waived.

¹ Under the NRRA, an exempt commercial purchaser is any person purchasing commercial insurance that, at the time of placement, meets the following requirements: (A) The person employs or retains a qualified risk manager (as defined in the NRRA) to negotiate insurance coverage; (B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding twelve months; and (C) The person meets at least one of the five following criteria: (I) the person possesses a net worth in excess of \$23,781,160, (II) the person generates annual revenues in excess of \$59,452,900, (III) the person employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate, (IV) the person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$35,671,740 or (V) the person is a municipality with a population in excess of fifty thousand persons. Currently, there are 20 U.S. jurisdictions which exempt non-admitted insurers from surplus lines regulation insurance procured by "industrial insureds" and an additional 12 states where an "industrial insured" exemption is recognized with respect to captive insurers or workers' compensation insurance only. A complete list of these states and the relevant exemptions can be found in Appendix C.

STATES' PARTICIPATION IN NATIONAL PRODUCER DATABASE

The NRRA encourages states to participate in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses. Any state that did not participate in such system by July 21, 2012 is prohibited from collecting any fees relating to licensing of an individual or entity as a surplus lines broker in the applicable state.

CALCULATION OF SURPLUS LINES TAXES UNDER THE NRRA

Virtually all of the states' surplus lines codes have been amended to incorporate many of the terms of the NRRA. While the NRRA recognized that the states may enter tax-sharing arrangements for surplus lines premium tax, the states have not agreed on a consistent tax-sharing arrangement or clearinghouse model. As a practical matter, tax-sharing for surplus lines would only impact a small number of transactions since it applies only to risks having multi-state exposures which comprise approximately 5% of all surplus lines transactions.

The two principal tax compact models are the Non-admitted Insurance Multi-State Agreement (NIMA), and the Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT). On May 2, 2016, the Nonadmitted Insurance Multistate Agreement (NIMA) was dissolved after its two largest members, Florida and Louisiana, withdrew from the tax-sharing system. The dissolution was effective October 1, 2016 and included a 12 month run-off period that ended September 30, 2017 to allow endorsements on policies effective prior to October 1, 2016 to be filed through the Surplus Lines Clearinghouse (SLC). Similarly, SLIMPACT never went into effect as an insufficient number of states enacted the legislation.

With the dissolution of NIMA and the inability of the states to implement SLIMPACT, surplus lines premium taxes in 51 jurisdictions (49 states, the District of Columbia, and Puerto Rico) are now calculated based on the insured's home state's tax rate and retained 100% by the home state, regardless of where the risks are located. Four states (Florida, Hawaii, New Hampshire, and Vermont) recently passed laws to become part of this majority.

ELIGIBILITY AND FILING REQUIREMENTS BY STATE

The following section sets forth a summary of the surplus lines eligibility and filing requirements of the various states for both foreign (U.S.) and alien surplus lines insurers. This information is based upon state surplus lines laws and regulations as well as responses to surveys that were sent to state insurance departments and surplus lines associations. Copies of applications and other pertinent forms may be obtained by contacting our firm or the state insurance departments directly.

It should be noted that most states treat reinsurance, independently procured/direct placement insurance, industrial insurance and insurance on subjects located out-of-state as outside the ambit of surplus lines regulation.

SURPLUS LINES LAWS - GENERALLY

Every U.S. jurisdiction has a surplus lines law, although the regulation of surplus lines business is primarily focused on surplus lines brokers. Despite the increasing interest in the solvency of non-admitted insurers, which has made the approval process somewhat more detailed, there is still almost no rate and form regulation of surplus lines insurers. By contrast, licensed insurers in the U.S. are broadly regulated as to solvency, rates and forms, market conduct, permissible investments, leverage (whether as to capital structure, premium to surplus ratio, or limit of risk to surplus) and affiliate relationships. Licensed insurers are also required to participate in a variety of government mandated insurance programs and pay assessments levied by state guaranty funds in the event of insurer insolvencies.

In theory, in most states, surplus lines insurers may not compete directly with licensed insurers for business and should write only business that licensed insurers will not write. Such “surplus” business must be “exported” by specially licensed surplus lines brokers who ensure that the required diligent search of licensed insurers has been accomplished and who also make appropriate tax and other filings. Certain jurisdictions maintain lists of coverages which are deemed to be generally unavailable from the admitted market (“export” lists), obviating even the need for the broker to first attempt to place these kinds of insurance with licensed carriers. A few states have eliminated the need for the performance of a diligence search of licensed insurers altogether. In order for an unauthorized insurer to avail itself of the opportunity to write business under the surplus lines laws of the various jurisdictions, it must first become an eligible surplus lines insurer in those jurisdictions.

NAIC APPROVAL

A non-U.S. (alien) insurer wishing to accept surplus lines insurance typically starts the process with an application for inclusion on the Quarterly Listing of Alien Insurers published by the International Insurers Department (“IID List”) of the National Association of Insurance Commissioners (“NAIC”). This includes the establishment of a trust fund, for the benefit of its U.S. policyholders, which is revalued annually and currently calculated to be the lesser of:

- (a) \$250,000,000; or

- (b) for business written on or after January 1, 1998, 30% of any amount up to the first \$200,000,000 plus 25% of any amount up to the next \$300,000,000 plus 20% of any amount up to the next \$500,000,000 plus 15% of any amount in excess of \$1,000,000,000 of either the Company's United States gross surplus lines liabilities or the Company's direct non-admitted United States liabilities excluding liabilities arising from aviation, wet marine and transportation insurance and direct placements. The Trust Fund Minimum Amount may in no event be less than \$5,400,000.

The application also requires that the company provide copies of its articles of incorporation and by-laws, biographical affidavits of the insurer's officers and directors, a business plan describing the insurer's global business followed by a description of the proposed lines of U.S. business, and financial statements. This information must be updated annually. A more detailed description of the application procedure and the standards for inclusion on the NAIC Quarterly List are contained in the IID Plan of Operation (see Appendix E).

ELIGIBILITY REQUIREMENTS OF INDIVIDUAL STATES

The laws of most U.S. jurisdictions require that a surplus lines insurer be deemed "eligible" by meeting certain financial criteria or by having been designated as "eligible" on a state-maintained list. Prior to the NRRA, state eligibility standards varied widely from state to state.

Following the enactment of the NRRA on July 21, 2011, a surplus lines transaction is subject only to the eligibility requirements of the insured's home state. To the extent the home state has established its own statutory or regulatory insurer eligibility requirements; they must be consistent with the NRRA.

Under the NRRA, the states are prohibited from imposing eligibility requirements on foreign (U.S.) surplus lines insurers except for (i) standards that conform with the NAIC's Non-Admitted Insurance Model Act ("the Model Act") or (ii) "nationwide uniform requirements, forms and procedures" enacted pursuant to a compact or other agreement among the states.

The Model Act requires a foreign surplus lines insurer to:

- (i) be authorized in its domiciliary state to write the type of insurance that it writes as surplus lines coverage; and
- (ii) have capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, equaling the greater of (1) the minimum capital and surplus requirements under the law of the home state of the insured, or (2) \$15 million.

Under the Model Act, the insured's home state commissioner may reduce or waive the capital and surplus requirements (down to a minimum of \$4.5 million) after the commissioner makes a finding of eligibility based on several factors.

In addition to eligibility requirements for U.S. domiciled insurers, the NRRA requires the states to permit the placement of surplus lines coverage with nonadmitted insurers domiciled outside the United States (alien insurers) that are listed on the NAIC's Quarterly Listing of Alien Insurers. Thus, all states must permit NAIC-listed alien insurers to place surplus lines coverage. A state may allow placement of coverage with alien insurers not on the NAIC list (and have a separate set of requirements for those non-listed insurers), but the states cannot refuse to allow placement with NAIC-listed alien insurers.

The NAIC's Quarterly Listing of Alien Insurers is available for reference and download on the NAIC's website at: https://www.naic.org/prod_serv_alpha_listing.htm#quarterly_alien.

Many U.S. jurisdictions are now tending to recognize that the NAIC's Quarterly Listing of Alien Insurers is effectively the approved list of eligible nonadmitted insurers based outside the U.S. Nevertheless, a number of state regulators are continuing to request financial and/or premium information and in some cases a fee, in order to include that company on their states' eligibility list. While the filing obligations and associated fees vary by state, we expect these data requests will diminish in time as state insurance departments begin to rely more on the information now available for reference and download from the NAIC's website for surplus lines eligibility purposes.

INDEPENDENTLY PROCURED/DIRECT PLACEMENT INSURANCE

Surplus lines is actually one of two methods of accessing the non-admitted market. The second method is known as a direct placement or independently procured placement. This takes place when an insured elects to go out of the state and purchase the desired insurance from an unauthorized carrier either directly with the company or through a broker or agent not licensed by the jurisdiction in which the risk is located, such as a Lloyd's Broker.

The right of a U.S. citizen to leave the state to obtain insurance on a risk located in the state with an unlicensed company without being regulated by the state was first enunciated by the United State Supreme Court in its landmark decision *State Board of Insurance v. Todd Shipyards Corporation*. In that case, the High Court also upheld the right of the buyer to be free of taxation on the transaction if the only contact with the state was the fact that the insured risk was located in the state.

In *Todd Shipyards*, the insurance buyer was located out of state and purchased property coverage out of state from an unauthorized insurer. The only connection or nexus with the state in the *Todd Shipyards* transaction was the location of the insured property. Under this set of facts, the High Court concluded that under the McCarran-Ferguson Act, the state was precluded from taxing or regulating the transaction.

While a number of subsequent decisions have distinguished *Todd Shipyards*, the current case law would still protect a direct placement transaction from state regulation provided the following circumstances apply:

- The insured does not access the non-admitted insurer through a resident agent or surplus lines broker.
- There is no activity by the non-admitted insurer in the state either in the making or in the performance of the contract.
- The transaction takes place "solely" (or, in New York, "principally") outside of the state where the insured is located.

Currently, only 43 U.S. jurisdictions have enacted self-procurement/direct placement statutes (see Appendix B). However, since these statutes govern actions by buyers that are "constitutionally guaranteed," they are intended more to tax rather than to regulate the transaction. These statutes do not prescribe rules or procedures which would grant jurisdiction over a non-admitted carrier in a self-procurement transaction, but simply impose a tax on the insured for the privilege of procuring insurance on its own behalf. However, recent case law suggests that states that have not adopted the tax provisions of NRRRA may not, in all cases, tax premium attributable to risks located outside of the insured's home state. Thus, subject to the judicial limitations mentioned above, state statutory authority is not required for a citizen to leave the state and purchase insurance from a non-authorized carrier.

Because most states do not have robust statutory frameworks regulating the direct placement of insurance policies other than with respect to the taxation of directly procured policies (in part because states would normally expect insurance transactions to be conducted through licensed or surplus lines-eligible insurance carriers), it can at times be difficult to ascertain what activities would violate the foundational tenets of self-procurement. For example, some states expressly prohibit the utilization of a U.S. broker, whereas other states are silent on the matter. Moreover, case law decisions in a number of states (including New York) stand for the proposition that the insured must physically leave its home state and procure the insurance policy in a jurisdiction where the insurance carrier is appropriately authorized.

INDUSTRIAL INSURANCE

There are 20 U.S. jurisdictions which currently exempt nonadmitted insurers from surplus lines regulation insurance procured by industrial insureds, and an additional 12 states where an "industrial insured" exemption is recognized with respect to captive insurers or workers' compensation insurance only (see Appendix C). State statutes define industrial insureds in various ways, but, in most states, the exemption applies to "sophisticated commercial buyers" having at least \$25,000 in annual premium for non-mandatory coverages, full-time risk managers or outside insurance consultants advising them of procuring insurance, and a certain number of full-time employees (usually 25) or amount of gross sales.

Under most of the industrial insured exemptions adopted by various states, any company that qualifies thereunder can procure insurance from an unauthorized insurer without leaving the state or following surplus lines procedural requirements. Thus, declinations from the admitted market are not necessary. There is no escape from premium taxes, however, since most states still seek to tax that portion of the premium allocable to in-state risks. The burden of filing and paying the tax will typically fall on the insured, since a surplus lines license is not required in the transaction.

At least one state, Maryland, does not recognize its industrial insured exemption as allowing for procurement of insurance through an unauthorized insurer without leaving the state or following surplus lines procedural requirements. Under applicable case law in Maryland, the industrial insured exemption only alleviates the burden of the unauthorized insurer from submitting to the service of process procedures in the insured's home state and does not otherwise allow for such insurer to conduct insurance business in the state unless licensed as an admitted insurer or eligible to write insurance coverage on a surplus lines basis.

The industrial insured exemption has not been adopted (except for captive insurers only) in some of the largest surplus lines states such as New York and Florida. Moreover, the NAIC Non-Admitted Insurance Model Act makes no provision for industrial insurance other than to include a drafting note to the effect that individual states can consider exemptions for industrial insurance purchased by a sophisticated buyer.

COMMERCIAL PURCHASER EXEMPTION

The NRRA also establishes a single "exempt commercial purchaser" definition and exemption standard that is applicable in every state. However, this is not a full exemption but only waives the diligent search requirement. This means a broker may go directly to the surplus lines market to place a policy for an exempt commercial purchaser if (i) the broker has disclosed to the exempt commercial purchaser that coverage may be available from the admitted market, which may provide greater protection with more regulatory oversight; and (ii) the exempt commercial purchaser has requested in writing that the broker procure/place such coverage with a surplus lines insurer.

Most states which had industrial insured exemptions prior to the enactment of the NRRA are continuing to recognize these exemptions (see Appendix C). Thus, in those states where the industrial insured exemption is retained, there could be two classes of exemptions: 1) For entities meeting the NRRA exempt commercial purchaser requirements; and 2) An additional class for entities that meet the state's industrial insured exemption. Prior to utilizing these exemptions, brokers would be well advised to consult the law of the home state of the insured as well as the NRRA definition to ensure that the exemption is used correctly.

OCEAN MARINE AND TRANSPORTATION INSURANCE

The surplus lines laws of 41 of the 53 U.S. jurisdictions (including District of Columbia, Puerto Rico and U.S. Virgin Islands) provide some type of ocean marine and transportation exemption. Most of these states provide a complete exemption for "ocean marine" although these exemptions do not always extend to aviation or transport risks generally. Those jurisdictions which do not have a full statutory exemption (or require such business to be written by an eligible surplus lines insurer) include Connecticut, District of Columbia, Florida, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin. In these states, insurers must follow the individual criteria for writing surplus lines business as set forth in the state's surplus lines laws.

BROKER LICENSING

The NRRA prohibits any state except the home state of the insured from requiring that a surplus lines broker be licensed in order to sell, solicit, or negotiate surplus lines insurance with respect to the insured. Accordingly, a broker is only required to maintain one surplus lines producer license to place a surplus lines policy, i.e., a license (resident or non-resident) in the insured's home state. For a wholesale transaction, the wholesale broker on each such account must have the appropriate license in the "home state of the insured" for each state where placements are made.

On January 12, 2015, legislation was enacted that established a permanent National Association of Registered Agents and Brokers ("NARAB II"). NARAB will create a national clearinghouse as a one-stop licensing system for agents and brokers operating outside of their home state. Agents and brokers will apply for membership in the Association, agreeing to strict standards and ethical requirements. NARAB will be governed by a board of state insurance commissioners and industry representatives with a goal of applying licensing, continuing education and nonresident insurance producer standards on a multi-state basis while preserving the laws of individual states.

10 of the 13 inaugural members of the NARAB board were nominated by President Obama before he left office. The nominees were eligible for a "fast-track" confirmation process in the Senate Banking Committee's Executive Calendar but were not acted on. Once thirteen nominees are approved, ten nominees would constitute a quorum, thereby enabling NARAB to start fulfilling its mission. NARAB will be based in Washington DC as a nonprofit corporation and regulatory agency with authority to issue multistate licenses to agents and brokers. After becoming licensed in one's home state, agents and brokers can obtain a nationwide license by becoming "members" of NARAB. It is uncertain at this point how President Biden will act with regard to the implementation of this legislation.

DOMESTIC SURPLUS LINES INSURANCE COMPANIES (DSLIs)

While a surplus lines carrier is generally not able to write surplus lines insurance in its state of domicile, many states are changing their laws to allow surplus lines carriers to issue policies in their state of domicile as Domestic Surplus Lines Insurers (DSLIs), for which a carrier would be approved or admitted in that state as a DSLI.

A total of 21 states now allow DSLI companies including: Arizona, Arkansas, Connecticut, Delaware, Georgia, Illinois, Iowa, Louisiana, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Texas, Vermont, Virginia and Wisconsin. While there exists variances in the states' legislative language, the qualifying criteria for a DSLI generally includes that (1) the insurer possess policyholder surplus of at least \$15 million; (2) the insurer is an eligible surplus lines insurer in at least one jurisdiction other than its state of domicile; (3) the insurer's board of directors has passed a resolution seeking to be a domestic surplus lines insurer in the domicile state; and (4) the insurance commissioner has approved the insurance company and issued a certificate of authority or other written approval of same. Since 2011, the number of domestic surplus lines insurers has grown from 15 to over 70, with the majority domiciled in Illinois and Delaware. While most of the aforementioned states have enacted similar domestic surplus lines statutes, some of them do have critical differences, such as whether the principal offices of the DSLI are required to be located in the state.

GENERAL INFORMATION:

1. Alabama **does not maintain** a list of eligible surplus lines insurers but does publish a list of certain unauthorized insurers that are known to be ineligible either as to financial requirements or as to claims practices.
2. Alabama **does** have a Surplus Lines Association.
3. Alabama **does not** have an Export List.
4. Alabama **does** have an industrial insured exemption that will remain in effect (see Appendix C). As of 7/21/2011, the exempt commercial purchaser exemption also became effective but is not yet codified.
5. **Surplus lines tax:** 6%, payable by broker.
6. Alabama has adopted **SLIMPACT** (HB 76, Act 2011-537) Effective: September 1, 2011.
7. Alabama **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Alabama may not prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the U.S. that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

Alabama may not impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a U.S. jurisdiction, except:

1. Alabama may require that the insurer be authorized to write the type of insurance in its domiciliary jurisdiction; and
2. Alabama may require that the insurer have capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:
 - the minimum capital and surplus requirements under the law of Alabama; or

- \$15,000.000.

The insurance commissioner may waive the minimum capital and surplus requirements if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability of the insurer's capital and surplus is under \$4.5 million.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Wet marine and transportation insurance.
2. Insurance on subjects located, resident or to be performed wholly outside Alabama or on vehicles or aircraft owned and principally garaged outside Alabama.
3. Insurance on property or operation of railroads engaged in interstate commerce.
4. Insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight, or cargo of such aircraft or against liability, other than workmen's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.
5. The property and operations of the shipbuilding and ship repair industry engaged in interstate or foreign commerce and vessels, cargoes, watercraft, piers, wharves, graving docks, drydocks, marine railways and building ways, commonly known as wet marine.
6. Industrial insurance.

OTHER COMMENTS OR REQUIREMENTS:

1. Effective, October 1, 2018, the Alabama Department of Insurance has mandated the use of OPTins (Online Premium Tax for Insurance) for insurance companies & brokers filing and paying Premium Tax or Surplus Lines.

Each individual surplus lines broker is required to file a tax form ID-15 and payment, with a

- policy report, for all surplus lines insurance transacted by him/her during the preceding calendar year by March 1st through OPTins at <https://www.optins.org/>. Licensed brokers are also required to file an annual tax form if reporting zero business. View surplus lines filing requirements at <https://aldoi.gov/SurplusLineWeb/PDF/SLProcessInstructions.pdf>.
2. Onus is on broker to ascertain if insurer:
 - is financially secure;
 - has transacted business for 5 years in its domiciliary country or state unless it is a wholly owned subsidiary of an insurer authorized in Alabama;
 - is not controlled by a foreign government;
 - has not been declared ineligible; and
 - has appropriate trust fund (if alien).
 3. Alabama enacted legislation in 2010 which allows a surplus lines broker to place part of an insurance risk with a non-admitted insurer which otherwise satisfies the requirements for a surplus lines insurer in the state, except for the five year seasoning requirement in its domiciliary jurisdiction, by making a special deposit in the state of not less than \$1,000,000 for the benefit of Alabama policyholders.
 4. The Alabama DOI issued a Bulletin in 2013 clarifying that the written disclosure statement required to be sent to insureds to the effect that the insurance coverage provided is not written by an authorized (licensed) insurer and not subject to guaranty fund protection, no longer applies to commercial insurance. The 1992 Bulletin which imposes the disclosure requirement will continue to apply to personal lines property, primary personal lines auto, homeowners (owner occupied), renters/tenants, farm owners, condo (unit owner), dwelling fire, and mobile home manufactured homes. The requirements of this Bulletin apply to new or renewed surplus lines policies which became effective on or after May 1, 2013.
 5. Every insurance contract procured and delivered as a surplus lines coverage must be initialed by, or bear the name and license number of, the surplus lines broker who procured it and must have stamped upon it the following:

“This contract is registered and delivered as a surplus line coverage under the Alabama Surplus Line Insurance Law.”

GENERAL INFORMATION:

1. Alaska **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Alaska **does not** have a Surplus Lines Association or Stamping Office.
3. Alaska **does** have an Export List called Placement List (see Other Comments section #16).
4. Alaska **does not** have an industrial insurance exemption but has a statutory exempt commercial purchaser exemption and also recognizes the federal ECP definition under NRRRA (see Appendix C).
5. **Surplus lines tax:** 2.7% for lines other than wet marine and transportation (+ 1% filing fee), .75% (wet marine and transportation), payable by broker.
6. Alaska **does not** allow domestic surplus lines insurers in the state.
7. Alaska **does not** allow courtesy filings.

ELIGIBILITY AND FILING REQUIREMENTS (FOR ALIEN INSURERS NOT ON THE IID LIST):

1. **Annual Report:** certified and in U.S. Dollars. Due annually 9 months after reporting period for non-IID listed alien insurers).
2. **Application** (Form 08-1241b).
3. **List of Officers and Directors**
4. **Biographical Affidavits of Officers and Directors.**
5. **Certificate of Authority** from Domiciliary Regulator (country).
6. **Fees:** \$1,000 (application), \$500 (renewal) and \$100 (for filing certified annual statement) (only required for alien insurers not on the NAIC Quarterly List).
7. **Capital and Surplus:** \$15,000,000.
8. **Power of Attorney:** appointment of Director to receive service of process (Form 08-253).
9. **Plan of Operation.**
10. **Designation of Person** to accept service of process (Form 08-254).
11. **Articles of Incorporation and By-laws** (certified copies).
12. **Underwriting Policy.**
13. **List of Control of Insurer.**
14. **Trust Fund:** \$2,500,000
15. **Valuation of Assets from Trustee.**

There are no eligibility and filing requirements for insurers listed on the IID list.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. **Annual Statement:** electronic version filed with the NAIC is acceptable: due July 1.
2. **Certificate of Authority or Compliance** (from Domiciliary Regulator showing lines authorized to write): due July 1.
3. **Capital & Surplus:** \$15,000,000.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

Wet marine and transportation insurance (including cargo) per definition in AS 21.34.900(15).

OTHER COMMENTS OR REQUIREMENTS:

1. Alaska eligibility list: most current located at: <https://www.commerce.alaska.gov/web/ins/SurplusLines.aspx>.
Broker may rely on the information contained in the most recent NAIC Quarterly List of Alien Insurers as evidence of an alien insurer's compliance.
2. Workers' compensation insurance may be placed in and written by non-admitted insurer **only if all requirements in AS 21.34.030 are met.**
3. Alaska provides that in case of a healthcare insurance market crisis, the Director will have the discretion to permit using nonadmitted carriers for healthcare insurance under AS 21.34 but only if all requirements in AS 21.34.035 are met. This provision does **not** open the way to write health insurance by exception under AS 21.34, and specifically **may not be used** to secure a lower premium rate for obtaining a competitive advantage.
4. Alaska requires that a (non-IID listed) alien non-admitted insurer which fails to pay the fee or file the financial statement required by Alaska statutes will be removed from the Alaska list of Eligible Surplus Lines Insurers.

5. AS 21.34.100(a) the surplus lines broker shall promptly deliver to the named insured or the producing broker the policy or, if the policy is not then available, a cover note, binder, or other evidence of insurance. The cover note, binder, or other evidence of insurance for the named insured shall be executed by the surplus lines broker and must contain a summary of all material facts that would regularly be included in the policy, the description and location of the subject of insurance, a general description of the coverages of the insurance, the premium and rate charged and taxes to be collected from the insured, the name and address of the insured, the name of each surplus lines insurer and the percentage of the entire risk assumed by each, the name of the surplus lines broker, and the license number of the surplus lines broker. Prompt delivery means no later than 30 days after the date coverage is bound. Evidence of insurance includes subsequent endorsements related to a policy.
6. The Alaska DOI reporting requirements for all surplus lines transactions involving new and renewal policies (by effective date) and premium bearing endorsements (by invoice date) must be reported on a quarterly basis on the Quarterly Report on or before the following due dates:

<u>Months:</u>	<u>Due Date:</u>
January, February, March	June 1
April, May, June	September 1
July, August, September	December 1
October, November, December	March 1 of the following year

Alaska DOI issued Regulatory Order 17-08 regarding the new requirements to file and pay through OPTins
<https://www.commerce.alaska.gov/web/portals/11/Pub/Consumers/Orders/Regulatory/2017/R17-08.pdf>

7. Every evidence of insurance negotiated, placed, or procured by a surplus lines broker must bear the name of the surplus lines broker, which may not be covered, concealed, or obscured by the producing broker, and the following legend in at least 10 point type:

“This is evidence of insurance procured and developed under the Alaska Surplus Lines Law, AS 21.34. It is not covered by the Alaska Insurance Guaranty Association Act, AS 21.80.”
8. Diligent search efforts of the admitted market must be documented prior to binding with a surplus lines insurer. The documentation must

be provided to the surplus lines broker no later than 15 days after binding, unless the broker requires it sooner.

9. A surplus lines insurer must include with each policy an Alaska Policyholder Notice. The surplus lines broker is responsible for ensuring the notice is attached to the policy. The approved form of the Alaska surplus lines policyholder notice required under 3 AAC 25.050 is set out below. A surplus lines insurer may submit another format for review and possible approval by the director.

ALASKA POLICY HOLDER NOTICE 3 AAC 25.050

This policy is issued by a nonadmitted or surplus lines insurer. Insurance may only be purchased from nonadmitted insurers if the full amount, kind, or class of insurance cannot be obtained from insurers who are admitted to do business in the State of Alaska. Your broker or the surplus lines broker has determined that this was true on the date the policy was placed. Before issuing a renewal policy or extending this policy, remarketing is required. To avoid intentional or unintentional extension of coverage in the surplus lines market when an admitted market for that coverage exists, a nonadmitted insurer is prohibited from the automatic renewal or extension of a policy without remarketing by your broker or the surplus lines broker.

In order to comply with the Alaska Administrative Code, the following notice is given:

You are hereby notified that, under 3 AAC 25.050, your policy will terminate effective no later than the date and time of its expiration. We reserve the right to cancel this policy sooner than the expiration date by giving you notice of cancellation as required in AS 21.36.220. You may request through your broker that a new policy from the surplus lines broker be concurrent with the effective date of the termination of this policy. You are also notified that a new policy, if issued by us, is subject to rerating, which may result in a premium increase of more than ten percent (10%). As required by 3 AAC 25.050, you are hereby notified that any subsequent policy issued by us may be subject to a ten percent (10%) or more

- increase in premium. The actual premium will be based upon rates that apply at the time a subsequent policy, if any, is issued and will be made available to you before the effective date of the new policy, or the date subsequent coverage is bound, whichever occurs first.**
10. The Alaska independent procurement statute 21.33.061 requires tax payment to Alaska when Alaska is the home state of the insured. The tax rate is 3.7%.
 11. In 2004, the ADOI issued Bulletin 04-14 to notify licensees regarding allowed broker fees and the appointment of insurance producers as brokers.
<https://www.commerce.alaska.gov/web/portals/11/pub/bulletins/B04-14.pdf>
 12. In 2014, the Alaska Division of Insurance (“ADOI”) issued Bulletin 14-05 to notify surplus lines licensees and companies of adopted regulatory changes. These changes include, but are not limited to:
 - elimination of requirement for the surplus lines broker to sign each report of a surplus lines transaction; however, the surplus lines broker is required to sign quarterly report affidavits;
 - modifications to diligent search requirements, including that the producing broker must provide the surplus lines broker diligent search documentation within 15 days of binding the insurance contract;
 - removal of requirement that the policyholder's notice be in the binder and cover note but the surplus lines broker continues to be responsible to ensure the notice is part of the policy; and
 - clarification that alien insurers not on the Quarterly Listing of Alien Insurers must pay a fee to be on Alaska's eligibility list.
 13. In 2015, ADOI issued Bulletin 15-10 to notify all licensees, who conduct diligent search with admitted companies, of common errors identified on the documentation provided to surplus lines brokers to be discontinued immediately.
<https://www.commerce.alaska.gov/web/portals/11/pub/bulletins/B15-10.pdf>
 14. In 2017, ADOI issued Bulletin 17-06 to all Alaska licensed surplus lines brokers notifying them of the updated lines of business codes:
<https://www.commerce.alaska.gov/web/Portals/11/pub/Bulletins/Bulletin%20B%2017-06.pdf>.
 15. In 2020, ADOI issued regulation changes to include several new definitions:
 - 3 AAC 25.090(e): In AS 21.34.080(a)(1), The term “insured” in the broker’s report of a surplus lines transaction means the “First Named Insured” for the transaction described in the report.
 - 3 AAC 25.900(e): “Surplus lines broker” is updated to mean (A) a firm or agency licensed under AS 21.27.790; or (B) an individual that is (i) licensed under AS 21.27.790 and (ii) not employed by a firm or agency licensed under AS 21.27.790.
https://www.commerce.alaska.gov/web/Portals/11/Pub/INS_RA20-02.pdf
 16. Alaska’s most recent Placement List is available at:
<https://www.commerce.alaska.gov/web/ins/SurplusLines.aspx>

GENERAL INFORMATION:

1. Arizona **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Arizona **does** have a Surplus Lines Association (see Other Comments section #5).
3. Arizona **does** maintain an Export List (see Other Comments section #6).
4. Arizona **does** have an industrial insured exemption which generally follows the NRRA approach (see Appendix C).
5. **Surplus lines tax:** single-state risks: 3%, payable by broker plus stamping fee of 0.20% (semi-annually). Multi-state risks (semi-annually).
6. Arizona has not affiliated with any existing compact but has been authorized to participate in a tax sharing agreement (HB 2112 Laws 2011, Ch. 136) Effective: July 20, 2011. Unless Arizona enters into a compact or multistate agreement, Arizona shall retain 100% of the surplus lines premium tax for coverage provided to Arizona home-state insureds.
7. Arizona **does** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Arizona may not prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from an alien insurer on the IID List. The AZ DOI added a link to its website which ties the AZ eligibility list directly to the NAIC Quarterly List (see Other Comments section #1).

ARS § 20-413 provides that for an alien insurer to be placed on the AZ List of Qualified Unauthorized Insurers, a sponsoring surplus lines broker must submit to the Director a completed Certificate of Surplus Lines Broker (Section I) and, Broker Affidavit (Section II) (SL Form 110 ed: 07/21/2011).

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. **Application** must be filed by the broker.

2. **Broker's Sponsorship** (through a licensed surplus lines broker).
3. **Sworn Statement** that the broker has ascertained the financial condition of the insurer by completion of the ADOI Form E-700.
4. **Certificate of Public Supervisory Official** (ADOI Form E-701, certifying capital and surplus).
5. **Capital and Surplus:** \$15 million.

ELIGIBILITY (INSURANCE EXCHANGE ONLY):

Trust Deposit: \$2,500,000.

CLASSES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Ocean marine and foreign trade insurance.
2. Insurance on subjects located, resident or to be performed wholly outside Arizona, or on vehicles or aircraft owned and principally garaged outside Arizona.
3. Insurance on property or operations of railroads engaged in interstate commerce.

OTHER COMMENTS OR REQUIREMENTS:

1. Arizona eligibility list available at <https://difi.az.gov/insurers/licensingregistration/surplus-lines-insurer>.
2. Broker may rely on the information contained in the most recent NAIC Quarterly List of Alien Insurers as prima facie evidence of an alien insurer's compliance.
3. Brokers placing insurance on ocean marine & foreign trade, out-of-state risks, vehicles or aircraft owned and principally garaged outside Arizona, and railroads engaged in interstate commerce, must keep a record for not less than three years from the expiration or cancellation date of the insurance in the same detail as required for surplus lines insurance. The record must be kept available in Arizona for examination by the Director of Insurance.
4. Surplus line tax exempt risks include:
 - Mexican auto insurance.
 - State of Arizona property and liability insurance.

- Surplus line insurance purchased by federally recognized Indian tribes to cover risks on its own reservation.
5. Contact information for the Surplus Lines Association of Arizona is as follows:
 J. Scott Wede, Executive Director
 Surplus Lines Association of Arizona
 14747 N. Northsight Boulevard
 Suite 111-449
 Scottsdale, AZ 85260
 Tel.: (602) 279-6344
 Email: swede@sla-az.org.
 6. Arizona export list is available on the Arizona Surplus Lines Association website ([Class Codes \(sla-az.org\)](http://ClassCodes.sla-az.org)).
 7. The Arizona Legislature has removed the compliance attestation from the required information a surplus lines broker must file with the Arizona Insurance Department to procure surplus lines insurance, if the insurance coverage is not a recognized surplus line. A surplus lines broker is also required to maintain evidence of compliance with ARS §20-407(A) for the duration of the policy plus 6 years after expiration date, if the coverage is not a recognized surplus line. A facsimile of a broker's signature is allowed on the semi-annual statement to be submitted to the stamping office in lieu of the original. The broker must maintain the original notarized statement for 6 years after the calendar year in which the statement was filed.
 8. The Arizona legislature in 2016 enacted legislation which established a domestic surplus lines insurer (DSLII) in Arizona effective August 6, 2016.
 9. Arizona no longer requires surplus lines brokers to requalify the insurers they sponsor on an annual basis. Foreign surplus lines insurers now remain on the list of eligible surplus lines insurers until they request removal, a broker withdraws sponsorship, or if they no longer meet the financial requirements for capital, surplus, and/or deposits.
 10. Any policy and any evidence of surplus lines coverage that is issued by an unauthorized insurer and that is issued for delivery to the insured must contain a conspicuously stamped or written notice in bold faced type that states one of the following:
 - “1. The surplus lines policy or evidence of coverage is issued by a **surplus lines insurer that is not a domestic surplus lines insurer**: Pursuant to section 20-401.01, subsection B, paragraph 1, Arizona Revised Statutes, this policy is issued by an insurer that does not possess a certificate of authority from the director of the Arizona Department of Insurance. If the insurer that issued this policy becomes insolvent, insureds or claimants will not be eligible for insurance guaranty fund protection pursuant to title 20, Arizona Revised Statutes.
 2. The surplus lines policy or evidence of coverage is issued by a **domestic surplus lines insurer**: if the insurer that issued this policy becomes insolvent, insureds or claimants will not be eligible for insurance guaranty fund protection pursuant to title 20, Arizona Revised Statutes.”

GENERAL INFORMATION:

1. Arkansas **does maintain** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Arkansas **does** have a Surplus Lines Association.
3. Arkansas **does not** have an Export List.
4. Arkansas has an industrial insured exemption for captive insurers only (see Appendix C) but otherwise follows the NRRA definition of exempt commercial policyholder (see Appendix C).
5. **Surplus lines tax:** 4% payable by broker 60 days following the calendar quarter that the business was transacted.
6. Arkansas has not affiliated with any existing compact but may enter into an agreement (HB 2143).
7. Arkansas **does** allow domestic surplus lines insurers in the state (see Other Comments section #3).

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

None, if company is on IID List (§23-65-310(a)).

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. Notice of Intent Letter which includes the attached documentation:
 - a. Certificate of Compliance from the surplus lines insurer's state of domicile.
 - b. Copy of most recent financial statement filed with its state of domicile.
 - c. Uniform Consent to Service of Process Form (UCAA Form 12) – surplus lines insurers do not have to appoint a resident agent, but provide the full name and address where a service of process is to be forwarded on Exhibit B of the form.
2. Insurer must be authorized to write in its domiciliary jurisdiction.
3. Capital and Surplus or its equivalent under the laws of its domiciliary jurisdiction, which equals the greater of the minimum capital and surplus

requirement under the law of its home state, or \$15,000,000.

4. Foreign Surplus Lines insurers no longer have to file any financial statement filings, renewal fees or state specific filings with our state since the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA).

If you have any questions please call, or visit this webpage:

<https://insurance.arkansas.gov/pages/industry-regulation/finance/surplus-lines-insurers/>

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Wet marine and foreign trade insurance.
2. Insurance on subjects located, resident, or to be performed wholly outside Arkansas or on vehicles or aircraft owned and principally garaged outside Arkansas.
3. Insurance on property or operation of railroads engaged in interstate commerce.
4. Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of the aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of the aircraft.
5. Transactions subsequent to issuance of or relative to a policy covering only subjects of insurance not resident, located, or expressly to be performed in Arkansas at time of issuance, or covering property in course of transportation by land, air, or water to, from, or through Arkansas and including any preparation or storage incidental thereto, and lawfully solicited, written or delivered outside Arkansas.

OTHER COMMENTS OR REQUIREMENTS:

1. Link to all eligible surplus lines insurers via the company search database at: <https://sbs.naic.org/solar-external-lookup/>
2. Arkansas requires each approved surplus lines carrier in the state, upon written request, to mail or deliver the policyholder's claim information to

the policyholder or his or her surplus lines broker within 30 days from the date of receipt of the request from the policyholder. This legislation also makes clear that surplus lines carriers are not required to file policy forms.

3. Arkansas has a process whereby a domestic insurer possessing policyholders' surplus of at least \$20 million may be designated as a "domestic surplus lines insurer" with the written approval of the Arkansas Insurance Commissioner and be allowed to write surplus lines insurance in any jurisdiction in which it is eligible. A "domestic surplus lines insurer" is subject to the 4% surplus lines tax and would be deemed to be a non-admitted surplus lines insurer in the state of Arkansas. It is also deemed to be a non-admitted surplus lines insurer under the Dodd-Frank Act. A domestic surplus lines insurer is not subject to the Arkansas Property and Casualty Insurance Guaranty Act, or the Arkansas Life and Health Insurance Guaranty Association Act. All provisions of the Arkansas Insurance Code regarding financial and solvency requirements apply to a domestic surplus lines insurer unless it is otherwise specifically exempted.
4. Every insurance contract procured and delivered as surplus lines coverage must be initiated by or bear the name of the surplus lines broker who procured it and must contain a conspicuous statement substantially similar to the following:

"This contract is registered and delivered as a surplus line coverage under the Surplus Lines Insurance Law, and it may in some respects be different from contracts issued by insurers in the admitted markets, and, accordingly, it may, depending upon the circumstances, be more or less favorable to an insured than a contract from an admitted carrier might be. The protection of the Arkansas Property and Casualty Guaranty Act does not apply to this contract. A tax of four percent (4%) is required to be collected from the insured on all surplus lines premiums."

5. In 2014, the Arkansas DOI issued a clarifying Bulletin regarding the eligibility of Lloyd's syndicates in Arkansas. The Bulletin states that any and all Lloyd's syndicates appearing on the NAIC's Quarterly Listing of Alien Insurers are eligible insurers in Arkansas per state statute and in accordance with the NRRA.
6. The Arkansas DOI issued Bulletin #14-2015 in 2015 which clarifies that "inspection fees" may be included as an "expense of underwriting" and, in relation, are not subject to the 20% aggregate fee limit associated with solicitation negotiation or servicing expenses. However, the DOI further ruled that fees customarily associated with the solicitation, negotiation, or servicing of a surplus lines policy are subject to the 20% aggregate limit contained in Ark. Code Ann. 23-66-310(c)(2).
7. On February 20, 2020, the Arkansas Department of Insurance (DOI) issued Bulletin No. 3A-2020 to remind surplus lines brokers to comply with Senate Bill 310. Effective July 24, 2019, Section 19 of S-310 amended AR ST s 23-65-315(a) to require surplus lines brokers to submit premium taxes to the State Treasurer through the DOI within 60 days following the end of the calendar quarter (instead of the end of the month as was currently required) in which surplus lines insurance was procured.

According to the DOI, surplus lines brokers should comply with the following remittance deadlines for surplus lines premium taxes in 2020:

Quarterly Surplus Lines Coverage Procured	Remittance Deadline
1 st Quarter (ending March 31, 2020)	June 1, 2020
2 nd Quarter (ending June 30, 2020)	August 31, 2020
3 rd Quarter (ending September 30, 2020)	November 30, 2020
4 th Quarter (ending December 31, 2020)	March 1, 2021

Surplus brokers are expected to use the OPTins to file and pay surplus lines premium taxes. Brokers may register to use the system by contacting the OPTins Marketing Team at 816-783-8787 or optinsmktg@naic.org. It takes 7-10 business days to set up a new account.

GENERAL INFORMATION:

1. California **does maintain** a List of Approved Surplus Line Insurers (LASLI) (<http://www.insurance.ca.gov/01-consumers/120-company/07-lasli/lasli.cfm>). The LASLI is a voluntary list of nonadmitted insurers that the California Department of Insurance (CDI) has approved for use by surplus line brokers for placement of risks when California is the home state of the insured.
2. California **does** have a Surplus Line Association (<http://www.slacal.com>) (also see Other Comments section #14).
3. California **does maintain** an Export List (see Other Comments section #4). (<http://www.slacal.com/brokers/export-list>).
4. California **does** have an industrial insured exemption (see Appendix C).
5. California recognizes an exempt commercial purchaser (called “commercial insured” in California) under California Insurance Code Sections 1760.1(b) and 1763(h).
6. **Surplus lines tax/Stamping Fee:** 3.0% payable by broker to the CDI; stamping fee of 0.25% (effective Jan. 1, 2020), payable by broker to The Surplus Line Association of California (SLA).
7. California has not affiliated with any existing compact but has adopted legislation allowing it to keep 100% of surplus lines premium tax where California is the insured’s home state (California Insurance Code Section 1775.5(b)). Also see California Insurance Code Section 1760.1(e)).
8. California law **does not** authorize domestic California surplus lines insurers.

ELIGIBILITY REQUIREMENTS FOR INSURERS QUALIFYING UNDER NRRA:

Effective July 21, 2011, the provisions of the NRRA have been incorporated into California Insurance Code Section 1765.1 such that a broker may place surplus line insurance for California home state insureds with:

- Any **Foreign** (U.S.-domiciled) insurer provided that the insurer has met the following requirements at the time of placement: (1) the insurer is licensed to write the type of insurance

in its domiciliary jurisdiction, and (2) it has at least \$45 million in capital and surplus.

- Any **Alien** (non-U.S.-domiciled) insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC International Insurers Department and licensed as an insurer in its domiciliary jurisdiction.

Surplus line brokers who make placements with non-admitted insurers under California Insurance Code Section 1765.1 are responsible for determining the eligibility of these insurers at the time of placement.

ELIGIBILITY AND FILING REQUIREMENTS FOR NONADMITTED INSURERS APPROVED ON THE LASLI:

In California, nonadmitted insurers may also voluntarily seek to be placed on the LASLI maintained by the CDI. This is an optional listing and insurers need not be on the LASLI to be used for surplus line placements. Both foreign and alien nonadmitted insurers may be included on the LASLI provided the insurers satisfy the standards set forth in California Insurance Code Section 1765.2.

Nonadmitted insurers on the LASLI must demonstrate to the State of California their financial stability, reputation and integrity, as well as adhering to specific capitalization, investment and solvency standards established under the California Insurance Code Section 1765.2. Refer to the California LASLI Filing Requirements Guide for Surplus Line Insurers on the California Surplus Line Associations website for details regarding current California eligibility and filing requirements for surplus lines insurers.

(<http://www.slacal.com/insurers/lasli-insurer-filing-information/insurer-filing-requirements>)

1. **Capital and Surplus:** \$45,000,000, see California Insurance Code Section 1765.2 for additional information.
2. **Seasoning:** 3 years of prior operating history.
3. **Surplus Line Contact Broker:** must be a California-licensed surplus line broker.
4. **Filing Fee:** \$6,724 (initial application), \$3,363 (subsequent annual renewal), \$375 (per type of updated financial documents), \$55 (per type of updated non-financial documents), and \$55 (per type of updated supplementary information).

5. **Annual Financial Statement:** certified, in U.S. Dollars, not older than 12 months.
6. **Quarterly Financial Statement:** verified.
7. **Report of Examination:** certified.
8. **Trust Agreement** (alien insurers only): certified.
9. **Quarterly Statement of Trust Asset Account** (alien insurers only): verified.
10. **Audited Financial Report:** certified, not older than 12 months.
11. **License or Certificate of Authority:** certified.
12. **Certificate of Compliance or Certificate of Good Standing** (or other equivalent certificate) from domiciliary regulator or from a licensed state.
13. **Market Conduct Report:** certified or verified.
14. **Regulatory Disclosure Statement:** verified.
15. Plan of Operation which outlines the proposed products in California, among other requirements.
16. **Principal Place of Business.**
17. **Appointment of Agent for Service of Process** in California.
18. **Biographical Affidavits** of insurer's officers and directors.
19. **List of California Surplus Lines Brokers** authorized to issue policies on behalf of the insurer.
20. Any additional information or documentation required by the Commissioner which is relevant to the financial stability, reputation, and integrity of the non-admitted insurer.

NOTE: If any of the documents required under California Insurance Code Section 1765.2 are available from the NAIC or other public source, the insurer does not need to file those documents with the CDI. If hard copies of the documents are filed, for LASLI applicants, the documents must be filed in duplicate (one original and one photocopy) with the CDI Corporate Affairs Bureau (CAB) in Oakland. For current LASLI companies, only one original copy is required and continues to be filed with the Accounting Services Bureau in Sacramento. However, for both LASLI applicants and current LASLI companies, Biographical Affidavits must be filed in triplicate (one original and two photocopies). Though insurers may continue to file by hard copy, the CDI is now able to accept original LASLI applications, annual renewals and updates electronically through the CDI LASLI portal. To access the portal go to: <https://lasliportal.insurance.ca.gov/> Refer to the California LASLI Filing Requirements

Guide for Surplus Line Insurers on the California Surplus Line Associations website for details regarding California eligibility and filing requirements for surplus line insurers. (<http://www.slacal.com/insurers/lasli-insurer-filing-information/insurer-filing-requirements>).

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES LAWS AND REGULATIONS:

The types of insurance listed below are exempt from California surplus lines laws and regulations per California Insurance Code Section 1760.5. Types #1, #3 and #4 must be placed by and through a California licensed special lines' surplus line broker.

1. Insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other ship owner interests; upon goods, wares, merchandise and all other personal property and interests therein, in the course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks; and marine builder's risks, dry docks and marine railways, including insurance of ship repairer's liability, and protection and indemnity insurance, but excluding insurance covering bridges or tunnels.
2. Reinsurance of the liability of an admitted insurer.
3. Insurance on property or operations of railroads engaged in interstate commerce.
4. Aircraft or spacecraft insurance.

OTHER COMMENTS OR REQUIREMENTS:

1. Effective July 21, 2011, when California is the insured's home state, California is the only state (1) where the broker needs to be a licensed surplus line broker; (2) to regulate the nonadmitted placement (such as the diligent search requirement); and (3) to require the payment of premium tax for nonadmitted insurance (i.e. 100% of the gross premium).
2. The California Insurance Code Section 1764(a) allows a licensed California surplus line broker to issue policies for home state insureds, in addition to other evidence of insurance (such as certificates) on behalf of eligible nonadmitted insurer(s), provided prior written authority has been granted by the insurer(s). California Insurance Code Section 1765.2(c)8 requires that the insurer provide a list to the CDI of these surplus lines brokers and any additions or deletions to that list.
3. California Insurance Code Section 1763(h)(1) exempts brokers from conducting a diligent search

of the admitted market if the broker is placing nonadmitted insurance for a California home state commercial insured as defined by California Insurance Code Section 1760.1(b) and the following occurs:

- the surplus line broker procuring or placing the surplus lines insurance has disclosed in writing to the commercial insured that surplus insurance may or may not be available from the admitted market that may provide greater protection and regulatory oversight, and
 - the commercial insured has subsequently requested in writing that the surplus line broker procure or place surplus line insurance from a nonadmitted insurer.
4. Coverages and risks that are on the “Export List” may be placed in the surplus line market without a diligent search.
 5. California Insurance Code Section 1620(b)(2) exempts eligible surplus line insurers from filing a bond with the courts before the insurers initiate or defend a lawsuit filed against them.
 6. California Insurance Code Section 1765.1(f)(1) permits insurance to be placed, on a limited basis, with nonadmitted insurers not eligible under 1765.1 if certain conditions are met (refer to the Code Section for specifics).
 7. California Insurance Code Section 1773 permits surplus line brokers to advertise and solicit in any advertising or marketing medium; these advertisements may include the name of specific nonadmitted insurers as well as the nonadmitted insurance products available, as long as
 - the nonadmitted insurer is authorized to accept placements from the surplus line broker pursuant to California Insurance Code Section 1765.1;
 - the nonadmitted insurer’s name is not used in connection with any of its own nonadmitted insurance products;
 - the insurer’s unlicensed status, and the nonadmitted status of the insurance products are disclosed in the ad in type no smaller than any telephone or fax number or address shown in the ad;
 - the ad does not contain any knowingly (or that should have been known) false or misleading information; and
 - the ad does not contain any information about premiums or rates.

NOTE: For eligible nonadmitted insurers that are members of groups of insurers, the law allows surplus line brokers and special lines’ surplus line

brokers to include the name of the group in their advertising.

8. California Insurance Code Section 1760.5(h) permits special lines’ surplus line brokers to advertise and solicit business in the same manner as surplus line brokers, except that special lines’ surplus line brokers are not limited to advertise or solicit with only eligible surplus line insurers pursuant to Insurance Code Section 1765.1.
9. Insurance Code Section 703.1(a) permits any eligible surplus line insurer pursuant to California Insurance Code Section 1765.1 to advertise in all media, provided all of the following apply:
 - his/her unlicensed status is disclosed;
 - the ad is truthful;
 - the ad does not discuss premiums or rates; and
 - specific products are not mentioned in media of general circulation. The prohibition against advertising specific products in “media of general circulation” does not extend to advertising in insurance trade press as well as other trade, industry and special interest publications.
10. For nonadmitted companies not eligible pursuant to California Insurance Code section 1765.1, advertising is permitted in any media except media targeted primarily at California insureds or prospective insureds, as long as they meet the standards set forth in California Insurance Code Section 703.1(a) and do not advertise any information about a specific product.
11. California Insurance Code Section 1639(e) permits a non-resident license to be issued to a surplus line broker and a special lines’ surplus line broker if the non-resident broker holds that type of license in the state or territory of the U.S. where the resident license is maintained. California Insurance Code Section 1768(d) requires non-resident surplus line brokers to keep in the state where he or she is licensed complete records of the business transacted by him or her for California home state insureds with nonadmitted insurers under his or her California non-resident surplus line broker license.
12. California Insurance Code Section 1763(g) allows brokers to extend existing surplus lines policies by 90-days in the aggregate during a rolling twelve month period without having to file a Confidential Report of Surplus Line Placement (SL-1) and a Diligent Search Report (SL-2) with the SLA. This policy extension does not allow any changes in coverage, terms, conditions or limits, however. Any additional premium charged for the extension is determined pro rata, based on the same rate of premium as the existing surplus line policy.

13. California requires every applicant for a surplus line broker business entity license to provide names of all persons who may exercise the power and perform the duties under the license. In addition, whenever a surplus line broker licensed as an organization desires to change the persons who are authorized to transact business under the license, it shall immediately file an application with the CDI reflecting the change. The legislation requires all natural persons named to take and pass both the property broker-agent and casualty broker-agent qualifying examinations, and become individually licensed as a surplus line broker. Also, surplus line brokers who are only transacting on behalf of a licensed surplus line broker organization are not required to file a \$50,000 surplus lines bond. However, all other surplus line brokers who are also placing surplus lines business through their individual license, must still comply with the \$50,000 bond requirement. Refer to California Insurance Code sections 1656, 1661, 1679. 1765(c) for specifics.
14. Contact information for the SLA is as follows:
Benjamin McKay, J.D., M.P.A.
Chief Executive Officer and Executive Director
The Surplus Line Association of California
12667 Alcosta Boulevard, Suite 450
San Ramon, CA 94583
Tel.: (415) 434-4900
E-mail: bmckay@slacal.com
15. California Insurance Code Section 1761(b) authorizes a nonadmitted insurer that is affiliated with a California domestic insurer to have common directors provided these common directors do not constitute the majority of the voting authority of the nonadmitted insurer and to receive certain administrative services rendered in California by its domestic affiliate (refer to the Code Section for specifics).
16. California Insurance Code section 1764.1 requires a specific disclosure statement to be provided to and signed by the insured at the time the producer accepts an application for an insurance policy issued by a nonadmitted insurer, other than a renewal of that policy. This disclosure is provided on a form referred to as either the D-1 or the D-2 freestanding disclosure statement (see below for the form). The difference between the D-1 and D-2 forms is that the D-1 is submitted when the applicant is applying for insurance with a nonadmitted insurer, the insured's signature is required, and the words "are applying to purchase" are included in the form. The D-2 includes the words "have purchased" and is attached to the policy after it has been issued. The disclosure

statements must be printed in 16-point bold type. The agent, broker, or surplus line broker who received the originally signed disclosure statements from the insured must maintain the original in his or her records for a period of at least five years after expiration or cancellation date of the policy and send copies of the disclosure statements to all agents, brokers, or surplus line brokers involved in the transaction. These records are available to the commissioner and the insured upon request.
Form D-1/D-2:

"IMPORTANT NOTICE:

- 1. THE INSURANCE POLICY THAT YOU [HAVE PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS LINE" INSURERS.**
- 2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT THAT APPLY TO CALIFORNIA LICENSED INSURERS.**
- 3. THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.**
- 4. THE INSURER SHOULD BE LICENSED EITHER AS A FOREIGN INSURER IN ANOTHER STATE IN THE UNITED STATES OR AS A NON-UNITED STATES (ALIEN) INSURER. YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINE" BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE AT THE TOLL-FREE NUMBER 1-800-927-4357 OR INTERNET WEBSITE WWW.INSURANCE.CA.GOV. ASK WHETHER OR NOT THE INSURER IS LICENSED AS A FOREIGN OR NON-UNITED STATES (ALIEN) INSURER AND FOR ADDITIONAL INFORMATION ABOUT THE INSURER. YOU MAY ALSO VISIT THE NAIC'S INTERNET WEBSITE AT WWW.NAIC.ORG. THE NAIC—THE NATIONAL ASSOCIATION OF**

INSURANCE COMMISSIONERS—IS THE REGULATORY SUPPORT ORGANIZATION CREATED AND GOVERNED BY THE CHIEF INSURANCE REGULATORS IN THE UNITED STATES.

- 5. FOREIGN INSURERS SHOULD BE LICENSED BY A STATE IN THE UNITED STATES AND YOU MAY CONTACT THAT STATE’S DEPARTMENT OF INSURANCE TO OBTAIN MORE INFORMATION ABOUT THAT INSURER. YOU CAN FIND A LINK TO EACH STATE FROM THIS NAIC INTERNET WEBSITE:
[HTTPS://NAIC.ORG/STATE WEB MAP. HTM.](https://naic.org/state_web_map.htm)**
- 6. FOR NON-UNITED STATES (ALIEN) INSURERS, THE INSURER SHOULD BE LICENSED BY A COUNTRY OUTSIDE OF THE UNITED STATES AND SHOULD BE ON THE NAIC’S INTERNATIONAL INSURERS DEPARTMENT (IID) LISTING OF APPROVED NONADMITTED NON-UNITED STATES INSURERS. ASK YOUR AGENT, BROKER, OR “SURPLUS LINE” BROKER TO OBTAIN MORE INFORMATION ABOUT THAT INSURER.**
- 7. CALIFORNIA MAINTAINS A “LIST OF APPROVED SURPLUS LINE INSURERS (LASLI).” ASK YOUR AGENT OR BROKER IF THE INSURER IS ON THAT LIST, OR VIEW THAT LIST AT THE INTERNET WEBSITE OF THE CALIFORNIA DEPARTMENT OF INSURANCE:
[HTTP://WWW.INSURANCE.CA.GOV/01-CONSUMERS/120-COMPANY/07-LASLI/LASLI.CFM.](http://www.insurance.ca.gov/01-consumers/120-company/07-lasli/lasli.cfm)**
- 8. IF YOU, AS THE APPLICANT, REQUIRED THAT THE INSURANCE POLICY YOU HAVE PURCHASED BE EFFECTIVE IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE WAS GOING TO LAPSE WITHIN TWO BUSINESS DAYS OR BECAUSE YOU WERE REQUIRED TO HAVE COVERAGE WITHIN TWO BUSINESS DAYS, AND YOU DID NOT RECEIVE THIS DISCLOSURE FORM AND A REQUEST FOR YOUR SIGNATURE UNTIL AFTER COVERAGE BECAME EFFECTIVE, YOU HAVE THE RIGHT TO CANCEL THIS POLICY WITHIN FIVE DAYS OF RECEIVING THIS**

DISCLOSURE. IF YOU CANCEL COVERAGE, THE PREMIUM WILL BE PRORATED AND ANY BROKER’S FEE CHARGED FOR THIS INSURANCE WILL BE RETURNED TO YOU.”

Date: _____

Insured: _____

17. Every policy issued by a nonadmitted insurer and every certificate evidencing the placement of insurance must contain or have affixed on its front by the insurer or surplus line broker the D-2 disclosure statement, in 16-point bold type, which contains substantially the same wording as the D-1 statement above but does not require a signature by the insured.
18. California Insurance Code Sections 1763.2 and 1764.1(a)(1) permit surplus line brokers to rely upon a signed D-1 disclosure statement obtained by another licensee involved in the transaction as evidence that it was obtained from the insured but only “if it is reasonable under all the circumstances to do so”.
19. The D-1 disclosure statement is not needed if the broker has determined that the policy is being issued to an industrial insured (see Insurance Code Section 1764.1(c) for details). However, the D-2 disclosure statement must be affixed to the policy provided to the insured.
20. The California Legislature enacted legislation in 2014 which exempts insurers whose insureds have accepted earthquake coverage that does not meet the minimum coverage requirement but has been approved by the insurance commissioner from being required to offer earthquake coverage with minimum requirements at the renewal. This exemption would apply provided the insured has been offered a renewal and received written notice regarding available earthquake coverage.
21. The California Legislature enacted legislation in 2014 regarding insurers’ responsibilities to policyholders in regards to specified residential property, private passenger automobile policies of at least six months’ duration, and individual disability income policies taking effect or renewed on or after January 1, 2016. The legislation provides that insurers must maintain a process allowing a policyholder to designate one additional person to receive notice of lapse, termination, expiration, nonrenewal or cancellation of a policy for nonpayment of premium; requires that insurers must notify insureds in writing or by electronic transmission of that right at the time of application or within 30 days of the inception date and every two

years thereafter; or requires that the insurer follow a legally prescribed process as detailed within the law if it fails to follow the process previously described. This process includes: notifying the policyholder of the right to designate one third party to receive notifications as detailed above; maintain records of designee information for the life of the policy; and notify the policyholder every two years of the right to update designee information or make a designation; the insurer may presume this right has been waived if no response is received within 30 days. The law prohibits a policy subject to the law's requirements from being canceled for nonpayment of premium unless the designated third party has been notified by first-class mail at least 10 days prior to the cancellation date. The law specifies that the designee does not acquire any substantive rights to the policy.

22. On November 03, 2020, California enacted Proposition 22, which requires "App-Based Transportation Companies" to provide their drivers certain accident and disability insurance coverages. In response, CDI issued a February 03, 2021 Notice for "Implementation of Insurance Provisions of Proposition 22," authorizing surplus lines insurers to provide certain coverages to "App-Based Transportation Companies" on a group basis.

GENERAL INFORMATION:

1. Colorado **maintains** a list of eligible surplus lines insurers (see Other Comments Section #3).
2. Colorado **does** have a Surplus Lines Association (see Other Comments section #4).
3. Colorado **does not** maintain an Export List (see Other Comments section #5).
4. Colorado **does** have an industrial insured exemption (see Appendix C) which will remain in effect and also recognizes the exempt commercial purchaser exemption under NRRA although it is not yet codified.
5. **Surplus lines tax:** 3%.
6. Colorado has not adopted legislation authorizing the state to participate in any tax sharing agreement.
7. Colorado **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

Application and fees as set forth below are **voluntary** if company wishes to be included on eligibility list:

1. **Filing Fee:** non-refundable filing fee of \$1,095 if company's Colorado premium is \$1,000,000 or less; \$4,260 if \$1,000,001 to \$10,000,000; \$5,595 if \$10,000,001 and over.
2. The application Form F is updated twice annually, on January 1 and July 1 (fees change). Applications received between January 1 and June 30 are required to have a January 1 current year update on the bottom of the Form F. Applications received between July 1 - December 31 are required to have a July 1 current year update at the bottom of the Form F. The application Form F is available on the Division's website for each renewal and for new company applications, which may be accessed here: <https://doi.colorado.gov/insurance-industry/insurance-companies/insurer-regulatory-forms-filings>
2. **Other items** determined to be necessary by the Commissioner as warranted by any special circumstances.

3. **Gross premium report:** by March 1 (must be submitted electronically on excel spreadsheet).
4. Except for gross premium report, all requalification filings must be mailed to Colorado DOI via postal service or overnight mail. Electronic filings will not be accepted.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

1. No filings required if company is on IID List.
2. Filing fee required if company wishes to be included on Colorado's eligibility list.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. **Capital and Surplus:** \$15,000,000.
2. **Licensed in home state** (remaining requirements necessary only if company wishes to be included on eligibility list).
3. **Certificate of Authority/Compliance** which must specify authorized lines in the state of domicile or port of entry.
4. The annual statement is required to be filed electronically with the NAIC.
5. In the case of an insurance exchange, provide evidence that the exchange meets the requirements of section 10-15-108(1)(b)(11), C.R.S.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES PLACEMENT REQUIREMENTS. HOWEVER, THESE TYPES OF INSURANCE ARE SUBJECT TO SURPLUS LINES PREMIUM TAX AND REPORTING:

1. Insurance on vessels or crafts or their hulls or cargoes or on marine builders' risks or marine protection and indemnity or other risks, including strikes and war risks commonly insured under ocean or wet marine forms of policy.
2. Insurance on subjects located, resident, or to be performed wholly outside Colorado or on vehicles or aircraft owned and principally garaged outside Colorado.

3. Insurance on the operations of railroads engaged in transportation in interstate commerce and their property used in such operations.
4. Insurance on aircraft owned or operated by manufacturers of aircraft or on aircraft operated in commercial scheduled interstate flight or the cargo of such aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of such aircraft.
5. Insurance on satellites or other devices intended for launch beyond the earth's atmosphere.

OTHER COMMENTS OR REQUIREMENTS:

1. Brokers placing exempted coverages above are required to keep a full and true record, for not less than three years, of each such coverage in the same detail as required for surplus lines insurance. The record must be kept available in the State for examination by the Commissioner of Insurance.
2. Commissioner may approve insurance pools, underwriting associations or other programs on a non-admitted basis.
3. "Approved" list may be obtained from the Dept's website:
<https://doi.colorado.gov/insurance-industry/producers/agents/surplus-lines-information-for-agents/agencies/producers/brokers>.
4. The Surplus Lines Association of Colorado is no longer gathering tax data on behalf of the DOI but otherwise continues to be active on a local and national level. Contact information is as follows:
John Wethey
Surplus Lines Association of Colorado
3570 E. 12th Avenue
Denver, Colorado 80206
Tel.: (303) 331-9399
Fax.: (303) 331-9006
Email: surplusline@earthlink.net.
The Association also maintains a website at www.colosla.org.
5. Although Colorado does not have an export list, there is a provision in the statute that relieves the due diligence requirement with respect to placements made on behalf of "exempt commercial policyholders" as defined in Section 10-4-1402 of the Colorado Insurance Laws.
6. All surplus lines insurance contracts must include the following:

"This contract is delivered as surplus line coverage under the Nonadmitted Insurance Act. The insurer issuing this contract is not licensed in Colorado but is an eligible nonadmitted insurer. There is no protection under the provisions of the Colorado Insurance Guaranty Association Act."

If the policy is written on a claims-made basis, the following must also appear on the policy:

"This policy is a claims-made policy which provides liability coverage only if a claim is made during the policy Period or any applicable extended reporting Period."

If an automobile policy does not provide the basic complying policy coverages in section 10-4-620, C.R.S. the following must appear on the policy:

"This policy does not meet the statutory requirements of this State's financial responsibility laws. It does not provide liability coverage for bodily injury and property damage."

The provisions of section 10-5-101.5 (1)(b), C.R.S. shall apply to policies of disability, property and casualty insurance issued or delivered in Colorado by an unauthorized insurer affording coverage only on property located temporarily or permanently, or operations conducted temporarily or permanently outside the boundaries of the United States of America, its territories or possessions when the policy is placed by licensed property and casualty producers or brokers of this state, who shall remain responsible for verifying that the insuring company is licensed or authorized by the appropriate regulatory bodies to transact the business of insurance in that jurisdiction, and contains the following disclaimer:

"This policy is issued by an insurance company that is not regulated by the Colorado Division of Insurance. The insurance company may not provide claims service and may not be subject to service of process in Colorado. If the insurance company becomes insolvent, insureds or claimants will not be eligible for protection under Colorado insurance law."

These required disclosures must be affixed to the declaration page of the contract given to the insured. A copy, bearing the disclosures, must also be maintained by the broker. In the case of the issuance of a binder prior to the formal policy, such disclosure must also appear on the binder.

7. The Colorado Division of Insurance issued a Bulletin in 2014 to clarify home state rules in Colorado. The Bulletin clarifies that if an insured is headquartered in Colorado but has locations in other states, 100% of the tax is payable to Colorado.

CONNECTICUT

CT

GENERAL INFORMATION:

1. Connecticut **does** maintain a list of eligible surplus lines insurers (see Other Comments section #1).
2. Connecticut **does not** have a Surplus Lines Association.
3. Connecticut **does** maintain an Export List (see Other Comments section #1).
4. Connecticut **does** have an industrial insurance exemption (see Appendix C) and also recognizes the exempt commercial purchaser exemption under NRRA.
5. **Surplus lines tax:** 4% payable by broker. State of Connecticut, its agencies and municipalities, are tax exempt.
6. Connecticut adopted **NIMA** (HB 6652, Public Act #11-61) effective June 29, 2011, but subsequently submitted notice of withdrawal from **NIMA** on April 2012.
7. Connecticut **does** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

1. No fee.
2. **Letter of intent** regarding company's plan to write in Connecticut.
3. Must be included on the IID list.
4. **Power of Attorney Form** (on CT DOI website).
5. **Form SL-2** (on CT DOI website).

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. **Capital and Surplus:** \$15,000,000.
2. **Letter of intent** regarding company's plan to write in Connecticut.
3. **Certificate of Compliance** from state of domicile.
4. **Annual Statement** and quarterly reports.
5. **Power of Attorney** (on CT DOI website).
6. **Filing fee** (eligibility): \$1,000.
7. **Renewal fee:** \$126.
8. **Form SL-2** (on CT DOI website).

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

Industrial Insurance, which is defined as "(i) an insured which procures the insurance of any risk by the use of the services of a full-time employee acting as an insurance manager or buyer on the services of a regularly and continuously retained qualified insurance consultant and (ii) whose aggregate annual premiums for insurance, including life, accident and health insurance, total at least fifty thousand dollars."

OTHER COMMENTS OR REQUIREMENTS:

1. A schedule of insurers authorized to underwrite in Connecticut can be obtained from the Department's website at www.ct.gov/cid. Companies coded with a "K" are authorized surplus lines insurers. Connecticut's Export list can be found at <http://www.ct.gov/cid/lib/cid/licencom.pdf>.
2. The Connecticut insurance regulations were amended in 2009 to permit electronic filing of surplus lines insurers annual statements.
3. On February 24, 2011, the Connecticut Insurance Department issued **Bulletin No. FS-4SL-10 (Revised)** which eliminates the SL-10 Quarterly Report (Connecticut premiums by broker) from the list of requalification requirements for eligible surplus lines insurers in Connecticut.
4. The Connecticut Legislature enacted legislation in 2013 which revises the Connecticut surplus lines law by replacing affidavits with signed statements setting forth facts showing that the licensee and insured were unable after a diligent effort to procure, from any authorized insurer or insurers, the full amount of insurance required to protect the interest of such insured. It also requires the type of policy, and if such policy is for real property, the location of such property. The licensee shall file such signed statements in electronic format with the Commissioner on 2/15, 5/15, 8/15 and 11/15 of each year.
5. Section 6 of Public Act No. 14-175 (effective as of January 1, 2015) amended the required notice that should appear on each insurance policy

issued pursuant to sections 38a-741 to 38a-744, inclusive, and 38a-794 of the C.G.S. by a surplus lines insurer. As of January 1, 2015, each policy shall bear on its cover, in not less than twelve-point boldface type in capital letters, the following:

“NOTICE

THIS IS A SURPLUS LINES POLICY AND IS NOT PROTECTED BY THE CONNECTICUT INSURANCE GUARANTY ASSOCIATION OR SUBJECT TO REVIEW BY THE CONNECTICUT INSURANCE DEPARTMENT. IT IS IMPORTANT THAT YOU READ AND UNDERSTAND THIS POLICY.”

6. The Connecticut Legislature enacted Legislation in 2014 which requires surplus lines carriers to use the standard fire policy form, although surplus lines commercial lines policies are permitted to define depreciation differently than the standard form requirement. However, for personal lines policies, surplus lines must adhere to the “like kind and quality” language of the standard fire form.

GENERAL INFORMATION:

1. Delaware **does not** maintain a list of eligible surplus lines insurers.
2. Delaware **does not** have a Surplus Lines Association.
3. Delaware **does not** have an Export List.
4. Delaware **does** have an industrial insured exemption with respect to captive insurers only (see Appendix C) but otherwise recognizes the exempt commercial policyholder exemption under NRRRA.
5. **Surplus lines tax:** 3%.
6. Delaware has not affiliated with any existing compact but Commissioner has been authorized to enter into an interstate cooperative agreement, reciprocal agreement, or compact (SB 109) Effective: July 21, 2011.
7. Delaware **does** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Brokers may place insurance with alien insurers that are listed on the Quarterly Listing of Alien Insurers maintained by the NAIC. §1931(a).

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. A surplus lines broker may not place coverage with a nonadmitted foreign insurer unless, at the time of placement, the nonadmitted insurer possesses capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of Delaware or \$15 million. Delaware does not impose a licensure eligibility requirement.
2. The commissioner may waive the minimum capital and surplus requirement for a nonadmitted insurer if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and

reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. §1931(a).

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Wet marine and transportation insurance (see other comments section #3).
2. Insurance on subjects located, resident or to be performed wholly outside Delaware or on vehicles or aircraft owned and principally garaged outside Delaware.
3. Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.
4. Insurance of aircraft owned or operated by manufacturers of aircraft or of aircraft operated in commercial interstate flight or cargo of such aircraft or against liability, other than workers' compensation and employers' liability, arising out of ownership, maintenance or use of such aircraft.

OTHER COMMENTS OR REQUIREMENTS:

1. Business entities cannot transact surplus lines business, only individual brokers. Tax reports must be made by (or on behalf of) individual surplus lines brokers. Agencies should NOT make tax filings.
2. There is a 5% tax on wet marine and transportation insurance.
3. The Delaware Nonadmitted Insurance Act [SB 109], enacted in 2011, created a new category of insurance company, referred to as a Delaware "Domestic Surplus Lines Insurer". This insurer category differs from others in that it allows a Delaware-domiciled insurer to be treated as nonadmitted in Delaware for particular business purposes. A Delaware domestic surplus lines insurer will be domiciled and admitted in Delaware but, unlike all other Delaware-domiciled insurers, can write surplus lines policies in Delaware.
4. Every insurance contract procured and delivered as surplus lines coverage pursuant to

this law shall have stamped or printed upon it, initialed by and bearing the name of the individual surplus lines broker who procured it, the following disclosure statement:

"This insurance contract is issued pursuant to the Delaware Insurance Laws by an insurer neither licensed by nor under the jurisdiction of the Delaware Insurance Department. This insurer does not participate in insurance guaranty funds created by state law. In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund."

5. The Delaware DOI issued a clarifying Bulletin in 2014 regarding the Statement of Surplus Lines Diligent Effort Form SL-1923. It continues to be the responsibility of the surplus lines broker to retain the SL-1923 in his or her files. However, the main purpose of the Bulletin is to highlight a requirement that to be a valid affidavit it must be notarized. The SL-1923 form was changed in 2013 to add a notary signature in accordance with specific Delaware legal requirements.
6. Delaware enacted Legislation in 2017 which increases filing fees for the initial registration and annual continuation for surplus lines insurers to \$150, increases initial filing fees for brokers to \$250, and increases resident and nonresident broker renewal fees to \$200.

DISTRICT OF COLUMBIA

DC

GENERAL INFORMATION:

1. District of Columbia **does not maintain** a list of eligible surplus lines insurers.
2. District of Columbia **does not** have a Surplus Lines Association.
3. District of Columbia **does not** have an Export List.
4. District of Columbia **does not** have an industrial insured exception but does recognize the exempt commercial purchaser exemption under NRR.
5. **Surplus lines tax:** 2%, payable by broker.
6. DC has not entered into a multistate agreement or compact for tax allocation purposes.
7. District of Columbia **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

DC may not prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the U.S. that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

DC may not impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a U.S. jurisdiction, except:

- DC may require that the insurer be authorized to write the type of insurance limits domiciliary jurisdiction; and
- DC may require that the insurer have capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:
 - the minimum capital and surplus requirements under the law of DC; or
 - \$15,000,000.

The insurance commissioner may waive the minimum capital and surplus requirements above if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

None.

OTHER COMMENTS OR REQUIREMENTS:

1. DC has no formal process for approving unauthorized insurers. However, the burden is on the surplus lines broker to establish that:
 - a local market is unavailable for the insurance to be placed, and
 - the surplus lines insurer accepting the business is financially sound.
 - there is no refund tax for cancellations or reduction in premium (other than for flat cancellation).
2. DC insurance statutes and regulations do not address disclosure requirements in surplus lines policies. However, under the Unfair Trade Act (the "Act"), a notice should be provided or the company could be in violation of the Act.

FLORIDA

FL

GENERAL INFORMATION:

1. Florida **maintains** a list of eligible surplus lines insurers (see Other Comments section #8).
2. Florida **does** have a Surplus Lines Association/Stamping Office, the Florida Surplus Lines Service Office (FSLSO) (see Other Comments section #3).
3. Florida **does not** have an Export List (see Other Comments section #9).
4. Florida **does not** have an industrial insured exemption statute related to Surplus Lines Insurance but otherwise recognizes the exempt commercial purchaser exemption under NRRA.
5. **Surplus lines tax:** 4.94% plus 0.06% service fee paid by the insured to the surplus lines agent, who remits to the FSLSO.
6. Florida adopted **NIMA** (SB 1816); however, the Board of Directors of NIMA voted on April 28, 2016 to discontinue operations and dissolve the NIMA, Inc. organization. No multistate business, renewal or reinstatement transactions effective on or after October 1, 2016 will be accepted through the Surplus Lines Clearinghouse multistate reporting platform. New, renewal or reinstatement transactions on or after October 1, 2016 with exposure in more than one jurisdiction should be reported directly to the home state's reporting mechanism.
7. Florida **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

In order for a surplus lines insurer to be on Florida's list of eligible surplus lines insurers, it must go through the same eligibility application process prior to implementation of NRRA and submit the filings listed below. These insurers will be identified on the Office of Insurance Regulation ("Office") website, under "Company Type", as "Surplus Lines". If an alien surplus lines carrier intends to operate in Florida pursuant to NRRA and notifies the Office of its intention to do so, then the Office will require completion of a Service of Process form by the insurer.

1. **Application:** includes service of process form.
2. **Annual Statement/Report:** certified and converted to U.S. dollars.
3. **Biographical affidavits:** investigative background report and fingerprint cards also required.
4. **Certificate of Authority.**
5. **Gross Premium Report** (filed electronically) due quarterly for foreign surplus lines insurers and annually for alien surplus lines insurers. Report must include risks exempt from surplus lines tax.
6. **Previous Operating History.**

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

1. **Trust Fund:** \$5,400,000 (not required for alien insurers writing ocean marine and/or aviation risks only).
2. **Capital and Surplus:** \$15,000,000 in aggregate.
3. **IID Financial Format** (Electronic filing is required): due July 31.
4. **Electronic premium submission:** due June 30.

Alien surplus lines insurers that notify the Office of their intention to operate under NRRA will be identified on the Office's website as "Surplus Lines – Federally Authorized".

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. **Report of Examination.**
2. **Certificate of Compliance.**
3. **Quarterly Financial Statements** and most recent annual statement.
4. **Report of Auditors.**
5. **Surplus:** \$15,000,000.
6. Verified report of all surplus lines insurance Transacted for insurance risks located in Florida during each calendar quarter must be filed with the FSLSO on or before the end of the month following each calendar quarter.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Commercial wet marine and transportation risks (see Other Comments section #1).
2. Aviation risks, including airport and products liability incidental thereto and hanger keepers liability (see Other Comments Section #1).

OTHER COMMENTS OR REQUIREMENTS:

1. Exempted coverages listed above may be exported under the following requirements: placement through a licensed Florida surplus lines agent and with an insurer made eligible by the Florida Office of Insurance Regulation for such coverages based on finding that insurer is able to meet its financial obligations. Most classes of aviation and wet marine are exempt from Florida surplus lines tax; however, personal & pleasure aircraft and personal & pleasure boats and yachts are taxable classes. All such classes unless they are governmental would be subject to the current Florida Surplus Lines Service Office fee and any other applicable assessments. Currently the only applicable assessment in Florida is the Emergency Management Preparedness Act, which is \$2.00 (personal lines) and \$4.00 (commercial lines) flat fee at policy inception. This fee would not be applicable to aviation or wet marine. Aviation and wet marine are not subject to the diligent effort search requirement.

Sec. (FLDOI) 626.918 (5) of the Florida Insurance Code also allows a Florida surplus lines agent to place a risk, in whole or in part, with an unauthorized insurer (i.e., one not on the Florida eligibility list) that is otherwise eligible for export in the surplus lines market, but cannot be procured from eligible surplus lines insurers, as long as certain conditions are met. These conditions include: 1) A signed statement from the Florida agent with the Florida Office of Insurance Regulation (OIR) setting forth such facts and the % of the risk placed with the unauthorized insurer; 2) a \$50,000 deposit with the FLDOI by the unauthorized insurer for each such risk; 3) the filing by the Florida agent of a certified copy of the insurer's statement of condition as of year-end showing that the insurer has net assets at least equal to the amount required for licensed companies in the state; 4) a signed statement by the insured contained in the policy, binder or cover note,

confirming, among other things, that the insured is aware that the insurer in question is not approved in Florida.

However, subsection (6) of this section states that when not more than 12.5% of the risk is so eligible for placement with an unauthorized insurer in Florida under subsection 5 of this statute, than the OIR may, at its discretion, only require the agent to obtain a signed statement as noted in item 4 above before placing the risk.

2. Insurer must have three years business history (requirement may be waived if insurer provides not readily available product or has operated for one year and has combined capital and surplus of \$25,000,000).
3. Contact information for the FSLSO is as follows:

Florida Surplus Lines Service Office
Gary D. Pullen, Executive Director
1441 Maclay Commerce Drive, Suite 200
Tallahassee, Florida 32312
Tel.: (850) 224-7676
Fax.: (850) 513-9624
Email: gpullen@fslso.com
www.fslso.com.

- 1 Florida allows for the issuance of a non-resident surplus lines agent license to a non-resident individual provided that the individual is licensed in his or her home state as a resident general lines and a resident surplus lines agent. There is an additional requirement that, under the laws of the individual's home state, residents of Florida may be licensed in a similar manner as a non-resident surplus lines agent in the applicant state.
5. Links to information concerning those companies eligible to do business in Florida is contained at the following website of the Florida Surplus Lines Service Office.
<https://www.fslso.com/search-results/eligible-insurers>.
6. Florida does not have an export list per se, but rather an amendment was made in 2011 to the statutory provisions contained in §626.916 (3)(b) exempting certain deregulated commercial lines coverages from the diligent search requirement. A link to these deregulated commercial lines coverages can be found at <https://www.fslso.com/compliance/diligent-effort>. This exemption applies to classes of insurance which are referenced in § 627.062(3) (d)1 as exempt from rate regulation as well as insurance related to the indemnity of deductibles for property insurance. These classes may be exportable under the following conditions:

- the insurance must be placed only by or through a surplus lines agent licensed in this state;
 - the insurer must be made eligible under § 626.918;
 - the insured has signed or otherwise provided documented acknowledgment of a disclosure in substantially the following form: “You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer;” and
 - if the disclosure is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no cause of action arises against, the retail agent presenting the form.
7. Any eligible surplus lines insurer who fails to file a report in the form and within the time required or provided for in the Surplus Lines Law may be fined up to \$500 per day for each day such failure continues, beginning the day after the report was due, until the date the report is received. Failure to file a report may also result in withdrawal of eligibility as a surplus lines insurer in this state. All sums collected by the DFS under this section shall be deposited into the insurance Regulatory Trust Fund. sec. 626.9361 Florida Insurance Code.
8. The Florida legislature enacted the following legislation in 2009:
- Section 626.913(4), Florida Statutes, was added which states “Except as may be specifically stated to apply to surplus lines insurers, the provisions of chapter 627 do not apply to surplus lines insurance authorized under ss. 626.913-626.937, the Surplus Lines Law. Chapter 627 is titled “Insurance Rates and Contracts”.
 - Section 626.924(2), Florida Statutes, was added which states “Surplus lines policies issued on or after October 1, 2009, shall have stamped or printed on the face of the policy in at least 14-point, boldface type, the following statement: **SURPLUS LINES INSURERS’ POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY**”.
- Section 626.9371, Florida Statutes, was added and states:
 - (1) The premiums for surplus lines insurance contracts issued on or after October 1, 2009, in this state or covering risks located in this state shall be paid in cash consisting of coins, currency, checks, or money orders or by using a debit card, credit card, automatic electronic funds transfer, or payroll deduction plan.
 - (2) All payments of claims made in this state under any contract of surplus lines insurance issued on or after October 1, 2009, shall be made:
 - a) in cash consisting of coins, currency, checks, drafts, or money orders and, if made by check or draft, shall be in such form as will comply with the standards for cash items adopted by the Federal Reserve System to facilitate the sorting, routing, and mechanized processing of such items; or
 - b) by debit card or any other form of electronic transfer if authorized in writing by the recipient or the recipient’s representative. Any fees or costs to be charged against the recipient must be disclosed in writing to the recipient or the recipient’s representative at the time of written authorization. However, the written authorization requirement may be waived by the recipient or the recipient’s representative if the insurer verifies the identity of the insured or the insured’s recipient and does not charge a fee for the transaction. If the funds are misdirected, the insurer remains liable for the payment of the claim.
 - Section 626.9372, Florida Statutes, was added and states:
 - (1) Each insurer that provides or may provide liability insurance coverage to pay all or a portion of any claim that might be made under surplus lines policies issued on or after October 1, 2009, shall provide, within 60 days after the written request of the claimant, a statement of a corporate officer or the insurer’s claims manager or superintendent setting forth the

- following information with regard to each known policy of insurance, including excess or umbrella insurance:
- (a) The name of the insurer.
 - (b) The name of each insured.
 - (c) The limits of the liability coverage.
 - (d) A statement of any policy or coverage defense that such insurer reasonably believes is available to such insurer at the time of filing such statement.
 - (e) A copy of the policy. In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and forward such request for information as required by this subsection to all affected insurers. The insurer shall supply the information required in this subsection to the claimant within 60 days after receipt of such request.
- (2) The statement required by subsection.
- (a) Must be amended within 60 days after the date of discovery of facts necessitating an amendment to such statement.
- Section 626.9373, Florida Statutes, was added and states:
 - (1) Upon the rendition of a judgment or decree by any court of this state against a surplus lines insurer in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer on or after the effective date of this act, the trial court or, if the insured or beneficiary prevails on appeal, the appellate court, shall adjudge or decree against the insurer in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the lawsuit for which recovery is awarded. In a suit arising under a residential or commercial property insurance policy not brought by an assignee, the amount of reasonable attorney fees shall be awarded only as provided in section 57.105 or section 627.70152, as applicable.
 - (2) If awarded, attorney's fees or compensation shall be included in the judgment or decree rendered in the case.
 - Section 626.9374, Florida Statutes, was added and states:
 - (1) Any surplus lines, personal lines residential property insurance policy issued on or after October 1, 2009, containing a separate hurricane or wind deductible must on its face include in at least 14-point, boldface type the following statement: THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE OR WIND LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU.
 - (2) A surplus lines, personal lines residential property insurance policy issued on or after October 1, 2009, containing a coinsurance provision applicable to hurricane or wind losses must on its face include in at least 14-point, boldface type the following statement: THIS POLICY CONTAINS A CO-PAY PROVISION THAT MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU.
9. Florida surplus lines agents and Independently Procured Coverage (IPC) filers are not required to report Non-US premium allocations on multi-state policy filings to the Florida Surplus Lines Service Office (FSLSO). Non-US premium is defined as premium charged on exposures occurring or located outside of the United States and its territories.
 10. 627.715(4) An agent may export a contract or an endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers under s. 626.916(1)(a).
 11. All policies (excluding the exempt commercial wet marine and transportation) are subject to the following statute: 626.916(1)(e) The insured has signed or otherwise provided documented acknowledgment of a disclosure in substantially the following form: "You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."

12. Under F.S. 627.062, agents are not required to complete a Diligent Effort form (showing declinations from 3 licensed carriers) prior to the placement of the following commercial classes of coverages:
- Excess or Umbrella
 - Surety and Fidelity
 - Boiler and Machinery and Leakage and Fire Extinguishing Equipment
 - Errors and Omissions
 - Directors and Officers, Employment Practices, and Management Liability
 - Intellectual Property and Patent Infringement
 - Advertising Injury and Internet Liability
 - Property risks rated under a highly protect risks rating plan
 - Fiduciary Liability
 - General Liability
 - Nonresidential Property (except for collateral protection insurance as defined in F.S. 624.6085)
 - Nonresidential Multi-Peril
 - Excess Property
 - Burglary and Theft
 - Travel insurance, if issued as a master group policy with a situs in another state where each certificate holder pays less than \$30 in premium for each covered trip and where the insurer has written less than \$1 million in annual written premiums in the travel insurance product in this state during the most recent calendar year.
 - Medical malpractice for a facility that is not a hospital licensed under chapter 395, a nursing home licensed under part II of chapter 400, or an assisted living facility licensed under part I of chapter 429
 - Medical malpractice for a health care practitioner who is not a dentist licensed under chapter 466, a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, a pharmacist licensed under chapter 465, or a pharmacy technician registered under chapter 465
 - Any other commercial lines categories or kinds of insurance or types of commercial lines risks that the office determines should not be subject to paragraph (2)(a) or paragraph (2)(f) because of the existence of a competitive market for such insurance or similarity of such insurance to other

categories or kinds of insurance not subject to paragraph (2)(a) or paragraph (2)(f), or to improve the general operational efficiency of the office

For the above risks, a signed disclosure statement is required in place of the Diligent Effort form.

13. Each surplus lines agent through whom a surplus lines coverage is procured must write or print on the outside of the policy and on any certificate, cover note, or other confirmation of the insurance his or her name, address, and identification number and the name and address of the producing agent through whom the business originated and must have stamped or written upon the first page of the policy or the certificate, cover note, or confirmation of insurance the words:

“THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER.”

14. The Florida Legislature enacted legislation in 2012 which eliminates the bond requirement for non-resident brokers.
15. The Florida Legislature enacted the following legislation in 2014 with regard to non-resident agent licensing requirements.
- The Non-Resident Surplus Lines Licensing laws Florida Statutes 626.9272 were amended. The new language removes the required experience, coursework and examination for those agents located in a state that a Surplus Lines exam is required for licensure. Please consult the Florida Department of Financial Services website for further details
 - Florida Statute 627.952 was amended to require non-resident agents **representing Florida Risk Purchasing Groups**, to be licensed and appointed as a Florida non-resident surplus lines agent and removes the current fidelity bond requirement
16. The Florida Legislature enacted legislation in 2019 which makes the following changes to the Florida surplus lines law effective 7/01/19:
- Lowers the threshold for the dwelling replacement cost of a residential structure

from \$1 million to \$700,000 or more when only one declination is required **626.914(4)**

- Eliminates the \$35 cap on the policy fee.
The new legislation allows the surplus lines agent to charge a reasonable policy fee which must be itemized separately to the customer before purchase and enumerated in the policy **626.916 (4)**
- The retail agent may charge a reasonable per-policy fee for placement of the surplus lines policy. This fee must be itemized separately to the customer before purchase.
626.916 (5)

GENERAL INFORMATION:

1. Georgia **does not** maintain a list of eligible surplus lines insurers.
2. Georgia **does** have a Surplus Lines Association (see Other Comments section #2).
3. Georgia **does not** have an Export List.
4. Georgia **does** have an industrial insured exemption with respect to captive insurers only (see Appendix C) but otherwise recognizes the exempt commercial policyholder exemption under NRR.
5. **Surplus lines tax:** If a surplus line policy covers risks or exposures located or to be performed both in and out of Georgia, the sum payable shall be computed based on (i) an amount equal to 4% of that portion of premiums allocated to Georgia plus (ii) an amount equal to the portion of premiums allocated to other states or territories on the basis of the tax, rates and fees applicable to properties, risks, or exposures located or to be performed outside Georgia.
6. Georgia has not affiliated with any existing compact (HB 413) However, Georgia enacted legislation in 2011 authorizing the Governor, in consultation with the Insurance Commissioner, to enter into a tax sharing agreement. The agreement must substantially follow the form of either SLIMPACT or NIMA as they exist on July 1, 2011. The Governor must select "the agreement, if any, that provides the best financial advantage to the state." Effective: July 1, 2011.
7. Georgia passed legislation in 2018 that allows domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

Surplus lines brokers may not place coverage with a nonadmitted insurer unless, at the time of placement, the nonadmitted insurer:

- is authorized to write such insurance in its domiciliary jurisdiction; and
- possesses capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital

and surplus requirements under the laws of Georgia or \$15 million. § 33-5-25(b)(1)(A).

The Commissioner may waive the minimum capital and surplus requirement for a nonadmitted insurer if he makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The director may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 33-5-25(b)(1)(A).

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Georgia utilizes the NAIC Quarterly List of Alien Insurers.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Insurance on property or operation of railroads engaged in interstate commerce.
2. Insurance of aircraft owned or operated by manufacturers of aircraft or operated in scheduled interstate flight, or cargo of the aircraft, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of the aircraft.

OTHER COMMENTS OR REQUIREMENTS:

1. Surplus lines insurers are required to furnish their brokers with a copy of their annual statement/report.
2. Contact information for the Georgia Surplus Lines Association is as follows:
Jill Jinks, President
c/o Strickland General Agency, Inc.
P.O.Box 4084
Duluth, GA 30096
Tel.: (678) 259-3700
www.sgaininga.com
3. Every insurance contract procured and delivered as a surplus lines coverage must be initialed by or bear the name of the surplus lines broker who

procured it and must have printed or stamped upon it the following:

“This contract is registered and delivered as a surplus line coverage under the Surplus Line Insurance Law, O.C.G.A. Chapter 33-5.”

GENERAL INFORMATION:

1. Hawaii **does not** maintain a list of eligible surplus lines insurers.
2. Hawaii **does not** have a Surplus Lines Association.
3. Hawaii **does not** have an Export List.
4. Hawaii **does not** have an industrial insured exemption but does recognize the exempt commercial purchaser exemption under NRRA.
5. **Surplus lines tax:** 4.68%, payable by broker (see Other Comments section #4).
6. On June 7, 2012, Hawaii submitted a notice of withdrawal from NIMA. All quarterly surplus lines taxes for policies (both multi-state and single-state) where Hawaii is deemed the home state should be filed with the Hawaii Insurance Division.
7. Hawaii **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

Hawaii does not impose a fee or request financial premium or other information from foreign and/or alien surplus lines insurers for surplus lines eligibility purposes. Under Hawaii's surplus lines laws, the surplus lines broker is responsible for determining if the surplus lines insurer meets the eligibility requirements under our laws.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Insurer must be on IID list, provided that (a) if an alien insurer is not on the IID list, the surplus lines broker shall maintain in the broker's office evidence of the financial responsibility of the insurer; and (b) evidence to the commissioner that the insurer maintains in the United States a \$5,400,000 trust fund.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. Surplus lines broker may place surplus lines insurance only with insurers who are authorized

to write that type of insurance in the insurer's domiciliary state.

2. A surplus lines broker may not place coverage with an unauthorized insurer unless, at the time of placement, the surplus lines broker has determined that the unauthorized insurer has capital and surplus or its equivalent under the laws of its domiciliary state that equal the greater of the minimum capital requirements of this State or a minimum of \$15,000,000.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Ocean marine insurance.
2. Insurance on subjects located, resident, or to be performed wholly outside Hawaii, or on vehicles or aircraft owned and principally garaged outside Hawaii.
3. Insurance of aircraft or cargo of such aircraft, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of such aircraft.

OTHER COMMENTS OR REQUIREMENTS:

1. Upon request of the Commissioner, the broker must immediately submit documentary evidence as to the financial responsibility of the insurer.
2. Hawaii enacted legislation in 2011 which defines "Surplus lines insurance" to mean "any property and casualty insurance on risks procured from or placed with an unauthorized insurer under the laws of the insured's home state."
3. Every insurance contract procured and delivered as surplus lines coverage, including any evidence of insurance other than a policy, must:
 - bear the name and address of the surplus lines broker who procured it, and
 - have stamped or written conspicuously upon the first page of the contract the following:

"This insurance contract is issued by an insurer which is not licensed by the State of Hawaii and is not subject to its regulation or examination. If the insurer

is found insolvent, claims under this contract are not covered by any guaranty fund of the State of Hawaii.”

4. Hawaii enacted legislation in 2019 which eliminates the need to apply out-of-state tax rates to risks located in other states on a home state policy. Under the legislation, all home state policies are now taxed entirely at the Hawaii rate of 4.68%.

GENERAL INFORMATION:

1. Idaho **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Idaho **does** have a Surplus Lines Association (see Other Comments section #2).
3. Idaho **does** have an Export List (see Other Comments section #3).
4. Idaho **does not** have an industrial insured exemption but does recognize the exempt commercial purchaser exemption under NRRA.
5. **Surplus lines tax:** 1.5% (plus stamping fee of 0.50%), payable by broker.
6. Idaho has not affiliated with any existing compact (HB 179).
7. Idaho **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

1. **Filing Fee:** \$500 with application, \$500 renewal fee: due March 1.
2. **Annual Statement/Report** (required with original application).
3. **Application or Letter of Intent** listing types of business company wishes to write, agreeing to abide by Idaho Law and that the company will only accept business placed through Idaho licensed surplus lines brokers (required with original application).
4. Designation of Legal Agent for Surplus Lines Companies (required with original application).

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

A surplus lines broker may place insurance with an alien insurer if the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC. § 41-1214(6)(b).

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

A surplus lines broker may place insurance with a foreign insurer if:

1. The insurer is authorized to place that type of

2. insurance in its domiciliary jurisdiction; and the insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that is the greater of the minimum capital and surplus requirements under the laws of this state or \$15 million.

The insurance commissioner may waive the minimum capital and surplus requirement for unauthorized foreign insurers if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. § 41-1214(7). The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 41-1214(7).

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Ocean marine and foreign trade insurances.
2. Insurance on subjects located, resident, or to be performed wholly outside of Idaho, or on vehicles or aircraft owned and principally garaged outside Idaho.
3. Aircraft and cargo in interstate flight (property and liability).
4. Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in commercial scheduled interstate flight, or cargo of such aircraft, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance or use of such aircraft.

OTHER COMMENTS OR REQUIREMENTS:

1. Idaho eligible surplus lines insurers (Foreign only) can be found on the Idaho DOI website: <https://apps.doi.idaho.gov/main/PublicForms/LicenseSearch>; A full List of eligible surplus lines insurers, including both foreign and alien, can be found on the Idaho Surplus Lines Association website: <https://www.idahosurplusline.org/surplus-lines-insurers>.

2. Contact information for the Idaho Surplus Lines Association is as follows:
Wendy J. Tippetts
Surplus Lines Association of Idaho, Inc.
595 South 14th Street
Boise, Idaho 83702-6836
Tel.: (208) 336-2901
Email: wendy@idahosurplusline.org.
3. Export list available on the Idaho Surplus Lines Association website at www.Idahosurplusline.org under "CODE, FORMS, & LISTS".
4. Brokers placing exempted coverages above are required to keep a full and true record, for not less than five years, of each such coverage in the same detail as required for surplus lines insurance. The record must be kept available in the state for examination by the Director of Insurance.

5. Every insurance contract procured and delivered as a surplus lines coverage must have stamped upon it, in red ink with at least ten (10) point bold print, and bear the name of the surplus lines broker who procured it, the following:

**THIS SURPLUS LINES CONTRACT IS
ISSUED PURSUANT TO THE IDAHO
INSURANCE LAWS BY AN INSURER
NOT LICENSED BY THE IDAHO
DEPARTMENT OF INSURANCE.
THERE IS NO COVERAGE PROVIDED
FOR SURPLUS LINE INSURANCE BY
EITHER THE IDAHO INSURANCE
GUARANTY ASSOCIATION
OR BY THE IDAHO LIFE AND
HEALTH INSURANCE
GUARANTY ASSOCIATION.**

(Name of Broker & Lic #).

GENERAL INFORMATION:

1. Illinois **does not maintain** a list of eligible surplus lines insurers.
2. Illinois **does** have a Surplus Lines Association (see Other Comments section #3).
3. Illinois **does not** have an Export List.
4. Illinois does have an industrial insured exemption (see Appendix C) but also recognizes the exempt commercial purchaser exemption under NRRRA.
5. **Surplus lines tax:** 3.5%, payable by broker and may be passed on to the insured, plus stamping fee of 0.075%, and up to 1% fire marshal tax on property premium, depending on specific coverage (see schedule on Surplus Line Association website). All taxes and stamping fees must be rounded to the nearest whole dollar (see “Other Comments” section #11).
6. Illinois has not affiliated with any existing compact.
7. Illinois **does** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

Licensed surplus line producers may procure surplus line insurance from an unauthorized insurer domiciled in the United States only if the insurer:

- (i) is permitted in its domiciliary jurisdiction to write the type of insurance involved; and
- (ii) has, based upon information available to the surplus line producer, a policyholders surplus of not less than \$15,000,000 determined in accordance with the laws of its domiciliary jurisdiction; and
- (iii) has standards of solvency and management that are adequate for the protection of policyholders.

Where an unauthorized insurer does not meet the standards set forth in (ii) and (iii) above, a surplus line producer may, if necessary, procure insurance from that insurer only if prior written warning of such fact or condition is given to the insured by the insurance producer or surplus line producer. The warning format is set forth in the surplus line regulations (50 Ill. Admin., Part 2801).

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Licensed surplus line producers may procure surplus line insurance from an unauthorized insurer domiciled outside of the United States only if the insurer meets the standards for unauthorized insurers domiciled in the United States (see Foreign Insurer Eligibility, above) or is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Insurance of property and operations of railroads or aircraft engaged in interstate or foreign commerce.
2. Insurance of vessels, crafts or hulls, cargoes, marine builders’ risks, marine protection and indemnity, or other risks including strikes and war risks insured under ocean or wet marine forms of policies.

OTHER COMMENTS OR REQUIREMENTS:

1. The onus is on the surplus lines producing broker to ascertain that insurers meet the eligibility requirements.
2. Insurance may be placed with an insurer not meeting these standards if the surplus lines producing broker gives written notice to the insured to that effect.
3. Contact information for the Surplus Line Association of Illinois is as follows:
David Ocasek, Chief Executive Officer
Surplus Line Association of Illinois
222 S. Riverside Plaza, Suite 2220
Chicago, Illinois 60606-6101
Tel.: (312) 263-1993
Website: www.slai.org
Email: docasek@slai.org.
4. When making a diligent effort to first place insurance with licensed insurers, a surplus line producer need not get a declination from any residual market (certain exceptions for personal lines).
5. Pursuant to Section 215 ILCS 5/445(a) of the Illinois Insurance Code, an insurance company

that is domiciled and licensed in Illinois and possessing policyholders' surplus of at least \$15 million may, pursuant to a resolution by its Board of Directors, and with the written approval of the Director, be designated as a "domestic surplus lines insurer" (DSLII). A DSLII must abide by the Illinois surplus lines laws and may only insure in Illinois risks which are procured from a surplus lines producer pursuant to Section 445 of the Illinois Insurance Code.

6. Surplus lines insurance contracts from unauthorized insurers, other than domestic surplus line insurers, shall have stamped or imprinted on the first page thereof in not less than 12-pt. bold face type the following legend:

"Notice to Policyholder: This contract is issued, pursuant to Section 445 of the Illinois Insurance Code, by a company not authorized and licensed to transact business in Illinois and as such is not covered by the Illinois Insurance Guaranty Fund."

Insurance contracts delivered under this Section from domestic surplus line insurers as defined in Section 445a shall have stamped or imprinted on the first page thereof in not less than 12-pt. bold face type the following legend:

"Notice to Policyholder: This contract is issued by a domestic surplus line insurer, as defined in Section 445a of the Illinois Insurance Code, pursuant to Section 445, and as such is not covered by the Illinois Insurance Guaranty Fund."

7. For further information, contact Illinois Department of Insurance website at <http://insurance.illinois.gov/>.
8. Independent procurement / Industrial Insured tax: 0.5%, plus up to 1% fire marshal tax on property premium, depending on specific coverage (see schedule on Surplus Line Association website), and filing fee of 0.2%. All taxes and filing fees must be rounded to the nearest whole dollar. The tax and filing requirement applies to policies effective January 1, 2015 or later.

To independently procure insurance, the insured must qualify as an "industrial insured" by meeting the "exempt commercial purchaser" definition in the NRRRA. Policies must be filed within 90 days of the effective date and taxes and filing fees must be paid within 30 days of the filing.

9. Proposals, endorsements, and other documents which are incidental to the insurance but do not affect the premium charged are exempted from filing and countersignature. Brokers do not need to file zero premium endorsements but still need to file zero premium semi-annual tax statements in Illinois.
10. Illinois surplus line producers must keep records of business transacted under their license for a period of 7 years from the policy effective date.
11. The current stamping fee rate of 0.075% (down from 0.125%) became effective January 1, 2019 and applies to policies effective on or after January 1, 2019 and to any endorsement to those policies.
12. Illinois enacted legislation in 2018 which decreased the tax rate for insurance independently procured by an industrial insured from 3.5% to 0.5% of gross premium. The new tax rate was made effective retroactively to January 1, 2018.
13. On February 26, 2021, Illinois introduced legislation (SB1753) that would eliminate the diligent search requirement with respect to commercial insurance contracts and only in those situations where the risk was referred to the surplus lines producer by an Illinois licensed insurance producer who is not affiliated with the surplus line producer. In addition, the bill would allow one diligent search to be conducted on an annual basis with respect to group master policies and program business. If adopted, the bill will go into effect on January 1, 2021.

GENERAL INFORMATION:

1. Indiana **maintains** a list of eligible surplus lines insurers (foreign only) (see Other Comments section #1).
2. Indiana **does not** have a Surplus Lines Association.
3. Indiana **does not** have an Export list.
4. Indiana **does** have an industrial insured exemption (see Appendix C) which will remain in effect. As of 7/21/2011, the NRRA commercial purchaser exemption also became effective.
5. **Surplus lines tax:** 2.5%, payable by broker.
6. Indiana repealed all statutes related to **SLIMPACT**, which never went into effect as an insufficient number of states enacted the legislation.
7. Indiana **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

Indiana does not impose formal eligibility requirements other than a sponsoring broker requirement for foreign surplus lines insurers as noted below. Such requirements could come into effect eventually, however, through SLIMPACT. The Compact Commission is charged with promulgating uniform rules for compacting states regarding foreign insurer eligibility requirements as authorized by the NRRA. IC 27-18-2-2.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

NAIC Listing: If alien insurer appears on NAIC Quarterly List, it is approved to do business in Indiana.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

Sponsoring Broker: A licensed surplus lines producer must request by letter or by email that a foreign (U.S.) surplus lines insurer be added to the state's eligibility list.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Transactions in the state relative to a policy issued or to be issued outside the state, involving insurance on vessels, crafts, hulls or cargoes, marine builder's risks, marine protection and indemnity or other risks, including strikes and war risks commonly insured under ocean or wet marine forms of policy.
2. Industrial Insurance (see Other Comments section #3).

OTHER COMMENTS OR REQUIREMENTS:

1. Indiana eligibility list available at <http://www.in.gov/idoi/2567.htm>. Above list applies to foreign surplus lines only; alien surplus lines companies are automatically eligible for surplus lines in this state if they appear on the NAIC Quarterly List of Alien Insurers.
2. Insurance Commissioner may order surplus lines broker to cancel unauthorized insurer's policies if he/she believes financial condition of such insurer does not warrant continuation of the risk.
3. Commercial insureds which purchase insurance under the "industrial insured" exception to the state's unauthorized insurers statute must notify the Department of such transactions and, among other things, document that the purchased coverage was not available in the admitted market.
4. Effective July 1, 2007, resident surplus lines producers are no longer required to hold a tax guarantee bond in the amount of \$20,000. The surplus lines license was extended from a one year license to a two year license. The surplus lines fees increased from \$20 to \$80 for a resident surplus lines producer/agency and \$120 for a non-resident surplus lines producer/agency.
5. Effective September 9, 2011, the IN DOI imposes retaliatory fees for non-resident surplus lines producers of IL.

6. Effective May 1, 2012, the IN DOI converted to birth month renewal. Business entity license will continue to renew the month initially licensed. Also, invoices for renewals will no longer be printed and mailed. If producer wishes to receive notice, he must insure his email address is on file with the IN DOI.
7. Effective September 13, 2012, the IN DOI imposed retaliatory fees for non-resident surplus line producers of CA, CI, MA and NJ.

GENERAL INFORMATION:

1. Iowa **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Iowa **does not** have a Surplus Lines Association.
3. Iowa **does not** have an Export list.
4. Iowa **does** have an industrial insured exemption. § 515I.9.
5. **Surplus lines tax:** 1%, payable by soliciting agent.
6. Iowa has not affiliated with any existing compact. On a multi-state risk when Iowa is not the home state, Iowa will not collect any premium tax. On a multi-state risk where Iowa is the home state, Iowa will collect 100% of the premium tax of 1%.
7. Iowa enacted legislation in 2019 that **does** allow domestic surplus lines insurers in the state.
8. An insured whose home state is Iowa must pay the independently procured insurance premium tax when procuring a policy directly from a nonadmitted insurer.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

1. **Annual Statement/Report:** in U.S. dollars.
2. **List of Agents used in State:** (preferred).
3. **Service of process** information.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

1. **Trust Fund:** follows NAIC requirements (see Appendix E).
2. **Capital and Surplus:** follows NAIC requirements (see Appendix E).
3. The State's statutory eligibility requirements are not applicable to alien insurers listed with the NAIC.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. **NAIC UCAA Expansion Application,** available through the Department's website,

www.iid.iowa.gov, or through the NAIC website, www.naic.org/industry.

2. Remittance of the greater of a \$100 filing fee or a retaliatory fee, and a \$2,000 examination fee for all new applicants.
3. Maintain the greater of either minimum capital and surplus of \$15,000,000 or risk-based capital pursuant to Iowa Code Chapter 521E (see Other Comments Section #2).
4. For renewal: \$100 renewal fee, quarterly signed jurat, and submission of other documents and materials listed on the Department's website, www.iid.iowa.gov.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

Insurance on vessels, craft or hulls, cargoes, marine builder's risks, marine protection and indemnity or other risks including strikes and war risks commonly insured under ocean marine or wet marine forms of policies.

OTHER COMMENTS OR REQUIREMENTS:

1. Iowa eligibility list available at: <https://data.iowa.gov/Regulation/American-Surplus-Lines-Companies/hn22-e382/data>.
2. A producer who places coverage with a qualified surplus lines carrier must deliver to the insured, within 30 days of the date the policy is issued, a notice that states the following:

"This policy is issued, pursuant to Iowa Code chapter 515I, by an eligible surplus lines insurer in Iowa and as such is not covered by the Iowa Insurance Guaranty Association."

- A producer may comply with this rule by typing or stamping a verbatim copy of this language in a clear and conspicuous place on the policy.
3. Effective October 1, 2015, the Iowa Insurance Division implemented OPT^{ins} as the new tax filing system. The previous way of mailing the Report and Receipt for Payment of Taxes with your check payment is no longer accepted. The Iowa Insurance Division Surplus Lines Premium

Tax Reporting System has been disabled and is no longer available for use.

Using OPTins allows you to save time and ensure that both the forms and payment are received together and on time. **To implement OPTins, contact the OPTins Marketing Team at optinsmktg@naic.org or call (816) 783-8787.** If you already have an OPTins account, go to www.OPTins.org, click on 'OPTins Login' and enter your Username and Password. If you need assistance navigating the system or have questions/concerns, please contact the OPTins Help Desk Customer Service at 816-783-8990.

The policy filings may be entered at any time during the year by downloading the appropriate spreadsheet and saving it to your computer. OPTins will not allow you to upload the spreadsheet or remit premium taxes due until January. At that time the current annual report will be required to be downloaded and completed for that filing period. Tax season officially begins January 1 to March 1 of the year following when the business was written.

To avoid penalties, please have premium taxes paid no later than 11:59 CST on March 1st. All submissions made after that time will incur a 1% penalty on the total taxes due times the number of months they are past due until payment is received. There is NO grace period.

For more information on filing surplus lines taxes and to find the appropriate forms, follow this link: <http://www.iid.iowa.gov/slapp> or go to www.optins.org, click on Iowa.

4. In 2009, Iowa adopted ADC 191-21 1-9 implementing electronic filing for surplus lines brokers and eliminating the "zero" reports.

KANSAS

KS

GENERAL INFORMATION:

1. Kansas **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Kansas **does not** have a Surplus Lines Association.
3. Kansas **does not** have an Export List.
4. Kansas **does** have an industrial insured exemption for captive insurers only (see Appendix C) and also recognizes the NRRA Exempt Commercial Purchaser exemption unless or until SLIMPACT rules are issued.
5. **Surplus lines tax:** 6%, payable by broker.
6. Kansas has enacted Legislation in 2015 rescinding its participation in **SLIMPACT**.
7. Kansas **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

None. There is a \$200 fee to be added to the State's eligibility list.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Must be listed on the IID List.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. **Capital and Surplus:** equal to or greater than \$4,500,000.
2. Authorized to write in its home jurisdiction.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

None.

OTHER COMMENTS OR REQUIREMENTS:

1. Kansas eligibility list available at https://towerii.ksinsurance.org/kid/docs/exlms/EXListed_Cos.pdf
2. Non-admitted insurers cannot write primary automobile, medical malpractice for Kansas defined health care providers, e.g., workers' compensation, and any coverages which can be placed in the Kansas Fair Plan.
3. Requirements and license application for non-resident surplus lines brokers may be obtained from the Kansas Insurance Department's website at <https://insurance.kansas.gov/excess-surplus-lines/>
4. Any policy issued under the provisions of Kansas surplus lines law shall have stamped or endorsed in a prominent manner thereon, the following:

"This policy is issued by an insurer not authorized to do business in Kansas and, as such, the form, financial condition and rates are not subject to review by the Commissioner of insurance and the insured is not protected by any guaranty fund."
5. The "Self-Procured Insurance Tax Report for Surplus Lines Coverage" form for insurance procured directly by an insured from a nonadmitted insurer can be found at: [EL-self-procured-reporting-form.pdf](#) (ks.gov).

KENTUCKY

KY

GENERAL INFORMATION:

1. Kentucky **does maintain** a list of eligible surplus lines insurers.
2. Kentucky **does** have a Surplus Lines Association.
3. Kentucky **does not** have an Export List.
4. Kentucky **does** have an industrial insured exemption (see Appendix C) as well as a statutory exempt commercial purchaser exemption. It also recognizes the ECP definition under NRRA unless or until SLIMPACT rules are issued.
5. **Surplus lines tax:** 3% plus 1.8% surcharge, payable by broker. (See Other Comments section #1).
6. Kentucky eliminated language authorizing the state to join **SLIMPACT** (HB 345) Effective: July 28, 2018. Advisory Opinion 2011-24.
7. Kentucky **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

1. **Annual Statement/Report:** certified and in U.S. dollars preferred, plus \$100 annual statement fee.
2. **Service of Process** form.
3. Kentucky does not currently have any statutory eligibility requirements for surplus lines insurers. If Kentucky chooses to enact eligibility requirements, the requirements must match those set out in NRRA or match “nationwide uniform” standards adopted by all of the states. The Compact Commission is charged with promulgating uniform rules for compacting states regarding foreign insurer eligibility requirements as authorized by NRRA Art III(3)

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Kentucky may not prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the U.S. that is listed on the

Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

Kentucky may not impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a U.S. jurisdiction, except:

- Kentucky may require that the insurer be authorized to write the type of insurance in its domiciliary jurisdiction; and
- Kentucky may require that the insurer have capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:
 - the minimum capital and surplus requirements under the law of Kentucky; or
 - \$15,000,000.

The insurance commissioner may waive the minimum capital and surplus requirements above if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer’s capital and surplus is under \$4.5 million.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Ocean marine and foreign trade insurances.
2. Insurance on vessels, craft of hulls, cargoes, marine builder’s risk, marine protection and indemnity or other risks, including strikes and war risks commonly insured under ocean or wet marine forms of policy.
3. Insurance on subjects located in, resident of, or to be performed wholly outside of Kentucky, or on vehicles or aircraft owned and principally garaged outside Kentucky.

4. Insurance on operations or railroads engaged in transportation in interstate commerce and their property used in such operations.
5. Insurance of aircraft owned or operated by manufacturers of aircraft or of aircraft operated in commercial interstate flight or cargo of such aircraft or against liability other than workers' compensation and employers' liability arising out of the ownership, maintenance or use of such aircraft.
6. Industrial Insurance.

OTHER COMMENTS OR REQUIREMENTS:

1. There is also a Local Government Premium Tax (LGPT) imposed by some municipalities, at varying rates depending on line and location.

Any and all policies [with the exceptions listed in KRS 136.392(5)] written or renewing on or after April 1, 2010, shall use the new surcharge rate of 1.8%.

2. Every insurance contract procured and delivered as a surplus lines coverage must have conspicuously stamped upon the face page, initialed by or bearing the name of the surplus lines broker who procured it, the following:

“This insurance has been placed with an insurer not licensed to transact business in the Commonwealth of Kentucky but eligible as a surplus lines insurer. The insurer is not a member of the Kentucky Insurance Guaranty Association. Should the insurer become insolvent, the protection and benefits of the Kentucky Insurance Guaranty Association are not available.”

3. The Kentucky Legislature enacted Legislation in 2014 which authorizes associations and member underwriters authorized to transact business in Kentucky to qualify as eligible surplus lines insurers if they meet the minimum capital and surplus standards and, if applicable, are listed on the NAIC's Quarterly Listing of Alien Insurers.
4. Kentucky Bulletin 2020-05 describes the broker's obligations with respect to remittance of surplus lines premium tax to the Department. The Bulletin can be found at: <https://insurance.ky.gov/ppc/Documents/Bulletin2020-05-PaymentofQuarterlySurplusLinesPremiumTaxes.pdf>.

LOUISIANA

LA

GENERAL INFORMATION:

1. Louisiana **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Louisiana **has** a Surplus Lines Association for brokers only but does not have a Stamping Office.
3. Louisiana **does not** have an Export List.
4. Louisiana **does** have an industrial insured exemption with respect to workers' compensation insurance only (see Appendix C) and also recognizes the exempt commercial purchaser exemption as of 7/21/2011, although it is not yet codified.
5. **Surplus lines tax:** 4.85%, payable by producer. Producers are required to separately itemize the tax on the declaration page of the policy, LRS 22:855.
6. Louisiana withdrew from **NIMA** in 2015.
7. Louisiana **does** allow domestic surplus lines insurers in the state (see Other Comments section #10).

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

1. **Examination Fee:** \$1,050 due March 1.
2. **Annual Statement/Report:** due April 15.
3. **Application.**
4. **Interrogatories.**
5. **Premium report.**

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

1. **NAIC Reporting Format:** due July 31.
2. **Statement of Total Premiums Written in Louisiana:** due April 15.
3. **Trust Fund:** Not less than the greater of \$5,400,000 or 30% of the company's U.S. surplus liabilities, excluding liabilities from exempt business, not to exceed \$60,000,000 (see Other Comments section #4).
4. **Statement of Assets in Trust.**
5. **Capital and Surplus:** follows NAIC requirements (see Appendix E).
6. **NAIC Listing.**

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. **Capital and Surplus:** Equal to or greater than \$15,000,000.
2. Authorized to write in its home jurisdiction.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Insurance on property and operation of railroads or aircrafts engaged in interstate or foreign commerce.
2. Insurance on vessels, crafts, hulls, cargoes, marine builders' risks, marine protection and indemnity, or other risks, including strikes and war risks commonly insured under ocean or wet marine forms of policy (see Other Comments sections #2 and #3).
3. Transactions involving risks located in Louisiana where the policy or contract of insurance for such risk was principally negotiated and delivered outside Louisiana, and was lawfully issued in a state or foreign country in which the foreign or alien insurer was authorized to operate an insurance business, and where such insurer has no contact with Louisiana except in connection with inspections or losses required by virtue of the contract or policy of insurance covering the risk located in Louisiana, including transactions involving the operation of workers' compensation claims offices.

OTHER COMMENTS OR REQUIREMENTS:

1. Louisiana eligibility list available at www.ldi.state.la.us/search_forms/white_list/white_list.aspx.
2. The definition of marine insurance does not involve vessels and watercraft under five tons of gross weight.
3. Coverage for any wet marine risk arising out of the exploration, discovery, development, or production for any mineral, the maintenance, shutting in, or the plugging and abandoning of any oil or natural gas or other marine mine, may only be placed with an insurer appearing on the Louisiana Surplus Lines Eligibility List.

4. Louisiana deems compliance with the IID Plan of Operation Standard form trust requirement to be in compliance with Louisiana Law.
5. The Louisiana Surplus Lines Association webpage is <https://lasurpluslines.com/>
6. The Louisiana Legislature enacted legislation in 2013 which authorizes the placement of surplus lines insurance without regard to the availability of coverage from authorized (admitted) insurers. The bill also clarifies that inclusion on the Louisiana list of unauthorized insurers shall be prima facie evidence that an unauthorized insurer meets the financial and eligibility criteria for surplus lines insurance.
7. A. Each surplus lines insurance policy or contract procured and delivered pursuant to the Louisiana Insurance Code shall have the following notice:

“NOTICE

This insurance policy is delivered as surplus line coverage under the Louisiana Insurance Code.

In the event of insolvency of the company issuing this contract, the policyholder or claimant is not covered by the Louisiana Insurance Guaranty Association or the Louisiana Life and Health Insurance Guaranty Association, which guarantees only specific types of policies issued by insurance companies authorized to do business in Louisiana.

This surplus lines policy has been procured by the following licensed Louisiana surplus lines broker:

Signature of Licensed Louisiana Surplus Lines Broker or Authorized Representative

Printed Name of Licensed Louisiana Surplus Lines Broker”

B. The notice required pursuant to Subsection A of this Section shall be:

- (1) Prominently displayed in the color red or prominently offset by a black border.
- (2) Printed or stamped on the policy or contract in bold and in not less than ten-point type.
- (3) Signed by the surplus lines broker who procured the policy or contract.

8. The Louisiana Department of Insurance issued guidance in 2015 for calculating, reporting and paying surplus lines taxes as a consequence of the state’s withdrawal from the Nonadmitted Insurance Multistate Agreement (NIMA) and the reduction of the surplus lines tax rate from 5% to 4.85% pursuant to Act 386 (H.B. 259), Laws 2015 (both effective October 1, 2015). The guidance also provides notice of changes in Form 438 that are required by Act 193 (H.B. 214), Laws 2015. Any surplus lines policy with an effective date before October 1, 2015, will continue to be taxed at the 5% rate, and any endorsement, cancellation, change in coverage, or other premium transaction related to a policy that has an invoice date before October 1, 2015, and that causes an addition to or refund of tax or additional or return premium attributable to the policy will also be taxed or refunded at the 5% rate. For a single-state policy with an effective date before October 1, 2015, to obtain a refund for taxes paid at the 5% rate. It will be necessary for the broker to amend the surplus lines tax return for the quarter in which the tax was originally reported and paid.
9. Effective July 1, 2015, two categories of purchasers are exempt from the tax on surplus lines insurance. The first category is “any college, university, school, institution, or program that is under the supervision or management of a system board of supervisors provided for in [La.] R.S. 17:3215 through 3217.1.” The boards referred to are those for Louisiana State University, Southern University, University of Louisiana, and the Louisiana Community and Technical College. The second category is any political subdivision “having a population of not less than three hundred fifty thousand persons according to the latest federal decennial census.” Any purchaser of insurance claiming the political subdivision exemption must provide legal authority to the surplus lines broker to substantiate the purchaser’s legal status as a political subdivision.
10. Effective August 1, 2015, a new category of insurer – the domestic surplus lines insurer – was created. As a result, references to “approved unauthorized” and “eligible unauthorized” insurers are changed where appropriate to simply state “surplus lines insurers.”
11. The Louisiana Legislature enacted legislation in 2018 allowing health and accident insurance to be written on a surplus lines basis.

GENERAL INFORMATION:

1. Maine **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Maine **does** not have a Surplus Lines Association; however, there is a New England SLA which Maine brokers may become members of.
3. Maine **does not** have an Export List.
4. Maine **does** have an industrial insured exemption with respect to captive insurers only (see Appendix C) and also recognizes the NRRA exempt commercial purchaser exemption.
5. **Surplus lines tax:** 3% of difference between gross premiums and return premiums (within 45 days of end of each quarter and annually), payable by broker.
6. Maine has not affiliated with any existing compact at this time, but Title 36, § 2532 of the Maine Tax Code gives the Tax Assessor the authority to enter into a multistate agreement under the NRRA after consulting with the Bureau of Insurance and industry stakeholders and conducting a fiscal analysis.
7. Bureau of Insurance Bulletin 378, issued June 17, 2011, discusses NRRA implementation in Maine. Bureau of Insurance Bulletin 414, issued June 16, 2016, discusses placement of insurance in the Surplus Lines Market and supplements, but does not replace Bulletin 378.
8. Maine **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

A surplus lines broker may place insurance with an alien insurer if that insurer is listed on the Quarterly List of Alien Insurers maintained by the NAIC. 24-A MRSA § 2007(5).

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

A surplus lines broker may place insurance with a nonadmitted insurer not domiciled in the U.S. if:

- The insurer is authorized to place that type of insurance in its domiciliary jurisdiction; and

- The insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that is the greater of the minimum capital and surplus requirements under the laws of this state or \$15 million.

The insurance commissioner may waive the minimum capital and surplus requirements for unauthorized foreign insurers if he makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. 24-A MRSA § 2007(4).

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION (SEE OTHER COMMENTS SECTION #3):

1. Wet marine and transportation insurance.
2. Insurance on subjects located, resident, or to be performed wholly outside of Maine, or on vehicles or aircraft owned and principally garaged outside Maine.
3. Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.
4. Insurance of aircraft owned or operated by manufacturers of aircraft or of aircraft operated in commercial interstate flight or cargo of such aircraft or against liability other than workers' compensation and employers' liability arising out of the ownership, maintenance or use of such aircraft.

OTHER COMMENTS OR REQUIREMENTS:

1. Bureau of Insurance Bulletin 439, effective November 26, 2019, sets forth clear rules for producers to follow in determining whether to place coverage in surplus lines:
 - Life insurance, health insurance (except disability insurance), and employee benefit excess ("stop-loss") insurance; reinsurance;

and workers' compensation insurance may not go into surplus lines.

- Motor vehicle insurance should not generally go into surplus lines because an assigned risk market is available.

For other risks, the following conditions apply:

- The insurance must be procured through a licensed producer with surplus lines authority.
 - The coverage must be necessary for the adequate protection of the risk in Maine. This requires the producer to review the needs of the particular risk. If adequate protection is available in the admitted market, then the producer may not place the risk in the surplus lines market.
 - The coverage must be one that an authorized insurer may write.
 - The producer must have made a diligent effort to place the coverage with authorized insurers.
2. Eligibility list available at this company licensing search engine at <https://www.pfr.maine.gov/almsonline/almquery/SearchCompany.aspx>.
 3. The most effective way to get approval as a surplus lines insurer in Maine is to provide a unique or "special" program for which there is a "need" in Maine.
 4. Exempted coverages (1-4 above) must be placed with an eligible surplus lines insurer; however, surplus lines brokers are not required to perform a diligent search of the admitted market prior to placing the coverage.

5. Per Title 24-A § 2412-A of the Maine Insurance Laws, any contract of insurance issued to a large commercial policyholder pursuant to this section, is also exempt from the diligent search requirement.
6. Every insurance contract procured and delivered as a surplus lines coverage must have stamped upon it, and bearing the name of the producer with surplus lines authority who procured it, the following:

"This insurance contract is issued pursuant to the Maine Insurance Laws by an insurer neither licensed by nor under the jurisdiction of the Maine Bureau of Insurance."

7. On November 26, 2019, Maine issued Bulletin 439 setting forth comprehensive standards relating to the diligent search requirement, noting that "doing a specific number of inquiries does not mean that the producer has fulfilled this requirement" and "[t]he test . . . is whether admitted coverage is available to the insured, not whether it is available to a particular producer." The bulletin also requires all surplus lines insurers to be on the state's eligibility list, and prohibits life, health, stop-loss, reinsurance, workers' compensation and motor vehicle insurance are generally prohibited from being written on a surplus lines basis in the state.

GENERAL INFORMATION:

1. Maryland **does** maintain a list of eligible surplus lines insurers.
2. Maryland **does** have a Surplus Lines Association (see Other Comments Section #3).
3. Maryland **does** have an Export List (see Md. Regulations § 31.03. 06.10).
4. Maryland **does** have an industrial insured exemption (see Appendix C) and also recognizes the NRRRA exempt commercial purchaser exemption. However, the industrial insured exemption only alleviates the burden of the unauthorized insurer from submitting to the service of process procedures in the insured's home state and does not otherwise allow for such insurer to conduct insurance business in the state unless licensed as an admitted insurer or eligible to write insurance coverage on a surplus lines basis.
5. **Surplus lines tax:** 3%, payable by broker. Premium includes a membership fee, survey fee, inspection fee, service fee, or other similar fee in consideration for an insurance contract.
6. Maryland has not affiliated with any existing compact (HB 959).
7. Maryland **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

With the exception of unsafe financial conditions as per MD, Code Ann. Ins. §3-319, if company is on the **NAIC List** then nothing need be filed as eligibility is automatic.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

Surplus lines brokers may not place coverage with a nonadmitted insurer domiciled outside the U.S. unless, at the time of placement, the nonadmitted insurer:

- is authorized to write such insurance in its domiciliary jurisdiction; and
- possesses capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction

that equals the greater of the minimum capital and surplus requirements under the laws of the domiciliary jurisdiction, or \$15 million.

§ 3-318(a) — (b).

The commissioner may waive the minimum capital and surplus requirement for a nonadmitted insurer if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The director may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 318(b)(1)-(3).

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Wet marine and transportation insurance except:
 - (i) any pleasure craft that is under 60 feet in length and is owned and used for pleasure and not for business, hire, or other commercial use;
 - (ii) fishing vessels under 50 gross tons weight that are not part of a fleet of 3 or more vessels;
 - and (iii) charter or head boats under 50 gross tons and that are not part of a fleet of 3 or more vessels.
2. Insurance on subjects located, resident, or to be performed wholly outside of Maryland or on vehicles or aircraft owned and principally garaged outside Maryland.
3. Insurance on property or operation of railroads engaged in interstate commerce.
4. Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of the aircraft, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of the aircraft.
5. Transactions subsequent to issuance of or relative to a policy covering only subjects of insurance not resident, located, or expressly to be performed in Maryland as of time of issuance covering property in course of transportation by land, air, or water to, from, or through Maryland and including any preparation or storage

incidental thereto, and lawfully solicited, written or delivered outside Maryland.

6. Industrial Life Insurance.

OTHER COMMENTS OR REQUIREMENTS:

1. When a policy is procured through a surplus lines broker who is licensed in the state and payment is not made directly to the surplus lines broker or insurer, a copy of any applicable premium finance agreement or other notice of premium finance agreement must be sent to the surplus lines broker.
2. A surplus lines broker is required to return any gross unearned commissions to the insurer within a reasonable time but not longer than 45 days after a written request by the insurer.
3. Contact information for Maryland Excess & Specialty Lines Brokers Association:
David Riffert, Treasurer
Tel.: (301) 439-4700.
4. The same requirements apply to non-resident brokers as resident brokers. Licenses are processed by the Maryland Insurance Administration.
5. Maryland surplus lines brokers are permitted to recover the cost of inspection for the placement of surplus lines insurance if the brokers do not have a financial interest in and do not receive compensation from the person that performs the inspection. Brokers are required to make clear and conspicuous written disclosure of any financial interest in the person performing such an inspection.
6. Maryland prohibits the procurement of surplus lines insurance for coverage of condominium associations.

7. Reports, affidavits and returns that are required to be filed in regard to surplus lines insurance are deemed to be in compliance with the state's filing requirement if the information is transmitted electronically on or before the filing date in a manner approved by the Insurance Commissioner.

8. An affidavit must be filed with the Maryland Insurance Commissioner on or before the 45th day after the last day of the calendar quarter in which the surplus lines insurance was placed.

9. Each insurance contract or confirmation procured must be:

- (a) endorsed or stamped conspicuously in boldface type on the first page of the insurance contract or confirmation as follows:

“This insurance is issued by a nonadmitted insurer not under the jurisdiction of the Maryland Insurance Commissioner”; and

- (b) accompanied by a written disclosure, as prescribed by the commissioner of insurance, that:
 - is written in clear, plain English; and
 - explains that the insurer does not possess a certificate of authority from the commissioner of insurance to engage in the insurance business in Maryland.

MASSACHUSETTS

MA

GENERAL INFORMATION:

1. Massachusetts **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Massachusetts **does** have a Surplus Lines Association (see Other Comments section #2).
3. Massachusetts **does not** have an Export List.
4. Massachusetts recognizes a diligent search exemption for commercial policyholders. §175.168(b)(iii) - (iv). However, the exemption does not match the NRRA approach to exempt commercial purchasers. Therefore, both the Massachusetts exemption and the NRRA exemption are in effect as of 7/21/2011.
5. **Surplus lines tax:** 4%, payable by broker.
6. Massachusetts has not affiliated with any existing compact and has taken no legislative action to comply with NRRA. Until such time as the Commissioner enters into a cooperative agreement, reciprocal agreement or compact, Massachusetts shall keep 100% of the surplus lines premium tax for coverage provided to an insured for whom Massachusetts is the Home State.
7. Massachusetts **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

1. **Annual filing fee:** \$150 (by March 1).
2. **CPA Audited Financial Report:** to be filed 120 days after company's fiscal year end.
3. IID Financial Format: by July 31 (alien insurers only).

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Massachusetts cannot prohibit surplus lines producers from placing insurance with alien insurers that appear on the Quarterly Listing of Alien Insurers maintained by the NAIC. § 384.021. Accordingly, Massachusetts may maintain separate requirements for alien insurers (§ 175.168(c)(iii)), but the state cannot prevent placement of insurance with those that appear on the NAIC list.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. Licensed in its domiciliary jurisdiction; and
2. Capital and surplus or its equivalent under the laws of its domiciliary jurisdiction equal to the greater of the minimum capital and surplus requirements under the laws of the home state or \$20 million.

Under NRRA, an insurance commissioner may waive the minimum capital and surplus requirement for a nonadmitted insurer if he makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

None (see Other Comments section #3 below with respect to tax exemption for ocean marine coverage).

OTHER COMMENTS OR REQUIREMENTS:

1. The single link below will bring you to a webpage where you will find, among others, a list of *Massachusetts Eligible Surplus Lines Companies* and a list of *Eligible Alien Unauthorized Insurers* [in Adobe and Excel formats]. Hypertexts to both lists are on the single webpage that can be accessed using this link:
<http://www.mass.gov/ocabr/licensee/license-types/insurance/insurance-companies/massachusetts-licensed-insurance-companies.html>.
2. New England Surplus Lines Association
Massachusetts contact:
Julie Sonier
Tel.: 1-800-262-7475.
3. Under M.G. L. c. 175, sec. 160, ocean marine coverage may be placed with a non-admitted company by a licensed insurance producer if the

company involved is “possessed of net cash assets of at least one million dollars computed on the basis fixed by sections ten to twelve, inclusive, and meets all the requirements of section one hundred and sixty-eight relating to foreign companies not authorized to transact business in the commonwealth.” Since M.G.L. c. 175, sec. 160 specifically permits ocean marine insurance to be placed with non-admitted companies by licensed Massachusetts insurance producers without the necessity of obtaining a special insurance broker license, the requirements of M.G.L. c. 175, sec. 168, *including the payment of a surplus lines fee*, would not apply in this instance.

4. M.G.L. §175:168 prohibits accident and health, workers’ compensation, compulsory motor vehicle liability and life insurance coverage placements in the surplus lines market. However, effective January 14, 2021, M.G.L. §175:168 was amended to allow surplus lines insurers to offer certain coverages to “personal vehicle sharing programs” (as defined by M.G.L. §175:168).

5. Assured must sign affidavit (Form BR-7), which must also be signed by broker, stating that he was informed by his insurance broker that the type and amount of insurance could be obtained from insurer’s not admitted in Massachusetts and that:
 - **the surplus lines insurer with whom the insurance was placed is not licensed in Massachusetts and is not subject to Massachusetts regulations; and**
 - **in the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.**

GENERAL INFORMATION:

1. Michigan **does not** maintain a list of eligible surplus lines insurers. However, eligible surplus lines insurers can be found on its website via an entity search tool (See Other Comments section #1).
2. Michigan **does not** have a Surplus Lines Association or Stamping Office.
3. Michigan **does** have an Export List available at http://www.michigan.gov/documents/lara/quarterly_surplus_lines_list_4252011_351537_7.pdf.
4. Michigan does have an industrial insured exemption applicable to captive insurers only (see Appendix C) and also recognizes the NRRRA exempt commercial purchaser exemption as of 7/21/2011.
5. **Surplus lines tax:** 2.0% (plus 0.5% regulatory fee on premiums written in the state).
6. Michigan has not affiliated with any existing compact and has taken no legislative action to comply with NRRRA. If Michigan is determined to be the home state of the insured, 100% of the premium tax is to be paid to the State of Michigan even for multi-state policies.
7. Michigan **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS):

Application, including general information on applicant; listing of lines to be written in Michigan and verification of authority to write these lines in company's state of domicile; certification of capital and surplus requirements of \$15,000,000; and \$500 fee (no annual renewal filings). The application and instructions can be found at https://www.michigan.gov/documents/lara/FIS_2260361190_7.pdf.

Eligibility and Filing Requirements (Alien Insurers):

Application, including general information on applicant; verification that company has been placed on the Quarterly Listing of Alien Insurers maintained

by the NAIC; listing of lines to be written in Michigan; and \$500 fee (no annual renewal filings).

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

None.

OTHER COMMENTS OR REQUIREMENTS:

1. Eligible surplus lines insurers in Michigan can be found via an entity search tool at: <https://difs.state.mi.us/locators?searchtype=InsuranceCompany&entitytype=SL>.
2. Michigan requires licensees, risk retention groups, and purchasing groups to electronically file surplus lines taxes through the NAIC OPTins website at www.optins.org. Michigan surplus lines agent may place coverage with an insurer which is neither authorized nor recognized for surplus lines if it files the appropriate affidavit and attempts to place the insurance with an authorized or recognized insurer first.
3. Marine, inland navigation and transportation insurance constitute transactions of insurance for which a certificate of authority is not required in Michigan. Such transactions must still be written by eligible surplus lines insurers although the Michigan Department of Insurance and Financial Services does not require the surplus lines broker to obtain declinations from admitted carriers.
4. Each policy, cover note, or other instrument evidencing surplus lines insurance which is to be delivered to an insured or a representative of an insured must have printed, typed, or stamped in red ink upon its face, in not less than 10-point type, the following notice:

“This insurance has been placed with an insurer that is not licensed by the state of Michigan. In case of insolvency, payment of claims may not be guaranteed.”

This notice must not be covered over or concealed in any manner.

GENERAL INFORMATION:

1. Minnesota **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Minnesota **does** have a Surplus Lines Association (see Other Comments section #6).
3. Minnesota **does not** have an Export List.
4. Minnesota **does not** have an industrial insured exemption but has adopted the NRRA exempt commercial purchaser exemption.
5. **Surplus lines tax:** 3%, of gross premiums less return premiums (paid to the Minnesota Revenue Department).
6. **Stamping fee:** .04%, payable to the Minnesota Surplus Lines Association (see Other Comments section #9).
7. Minnesota is not affiliated with any existing compact (SF 1045).
8. Minnesota **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

1. **NAIC Listing.**
2. **NAIC Non-Admitted Insurers Application** including biographical affidavits and surplus lines business plan.
3. **Trust Certification:** The U.S. Counsel (Representative) shall certify that the trust required to be maintained under Minnesota 60A.206, Subd. 5 is in existence, that it will not expire from the last calendar year-end for at least 5 years and has an unencumbered market value of at least \$1,500,000 (see Other Comments section #4), and shall submit copy of trust deed. Trustee shall provide a certified statement of market value. (For requalification: due April 1).
4. **NAIC IID Financial Format Reporting Format** (in U.S. dollars) including the appropriate footnotes, interrogatories, schedules, and certification of loss reserves. (For requalification: August 1).
5. **Renewal fee:** \$300. (On February 09, 2021, the Minnesota House of Representatives introduced House File HF1031, which, if passed, would increase the renewal fee to \$400.)

6. The commissioner may not prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, an alien insurer that is included on the Quarterly Listing of Alien Insurers maintained by the NAIC.
§ 60A.206 (Subd. 3)(d).

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

A surplus lines broker may place insurance with a foreign insurer if:

- the insurer is authorized to place that type of insurance in its domiciliary jurisdiction; and
- the insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, equal to the greater of the minimum capital and surplus requirements under the laws of this state or \$15 million. § 60A.206 (Subd. 3)(b)
- comply with Minnesota State Statute 60A. 195-60A.209

The insurance commissioner may waive the minimum capital and surplus requirement for unauthorized foreign insurers if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 60A.206 (Subd. 3)(b)

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

None.

OTHER COMMENTS OR REQUIREMENTS:

1. Minnesota's eligibility list is available at <http://mn.gov/commerce>, go to the bottom of the page and select License Lookup. No direct link is available to Minnesota's Surplus Lines Eligibility List. Use the link above to connect to

the online license lookup tool. Select 'Insurance Company' from the 'Choose' dropdown menu which will redirect you to a different website called 'Sircon'. Select 'Minnesota' in the state dropdown menu, then select 'company' for entity type, 'active company list' for inquiry type and 'surplus lines insurer' for company type.

2. Individual licensees are responsible for making sure that surplus lines insurance is placed only with surplus lines insurers that are in stable and unimpaired financial condition.
3. An insurer recognized as an "eligible" surplus lines insurer by the Commissioner is considered to be stable and financially unimpaired.
4. As alien insurers must be included in the NAIC Quarterly Listing, such insurers must maintain NAIC capital and surplus and trust fund requirements, whenever greater than Minnesota Statute.
5. Lloyd's syndicates must be included in the NAIC IID's Listing of Alien Insurers to be considered "eligible."
6. Minnesota surplus lines brokers must register with the Minnesota Surplus Lines Association. Their website is: www.mnsla.com.
7. Each policy, cover note, or instrument evidencing nonadmitted insurance from an eligible surplus lines insurer which is delivered to an insured or representative of an insured must have printed, typed, or stamped in red ink upon its face in not less than 10-point type, the following notice:

**"THIS INSURANCE IS ISSUED
PURSUANT TO THE MINNESOTA
SURPLUS LINES INSURANCE ACT. THE
INSURER IS AN ELIGIBLE SURPLUS**

**LINES INSURER BUT IS NOT
OTHERWISE LICENSED BY THE STATE
OF MINNESOTA. IN CASE OF
INSOLVENCY, PAYMENT OF CLAIMS IS
NOT GUARANTEED."**

This notice must not be covered or concealed in any manner.

Minn. Stat. Ann. § 60A. 207

(Note: Minn. Stat. Ann § 60A. 209 requires that the above notice be stamped in red ink on policies that are procured with ineligible surplus lines insurers).

8. In February 2017, the Minnesota Surplus Lines Association announced that effective 1/1/2018, Stamping Fees will be assessed on taxable premium (including broker fees) and not on policy premium only as before.
9. On January 27, 2014, the Minnesota Department of Revenue issued a Bulletin to clarify how surplus lines brokers should calculate gross premiums when a policyholder pays the broker a fee under a policyholder- broker agreement (e.g., a policyholder-broker service agreement) instead of the broker receiving a commission from the insurance company. The 2014 Bulletin states that when a broker is paid this kind of a fee, it is reasonable to include in gross premiums the commission the broker "would have collected" from the insurance company. The Bulletin then describes acceptable methods for approximating a commission. Revenue Notice #20-01, which replaces the 2014 Bulletin, adds additional clarity regarding what amount of a broker fee should be included in gross premiums pursuant to Minnesota Statutes section 297I.01, subdivision 9(d). Revenue Notice #20-01 may be found at: <https://www.revenue.state.mn.us/revenue-notice/20-01-insurance-taxes-nonadmitted-insurance-premium-tax-broker-fees>.

MISSISSIPPI

MS

GENERAL INFORMATION:

1. Mississippi **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Mississippi **does** have a Surplus Lines Association (see Other Comments section #3).
3. Mississippi **does not** have an Export List.
4. Mississippi **does not** have an industrial insured exemption but has adopted the NIRA exempt commercial purchaser exemption.
5. **Surplus lines tax:** 4%, plus 0.25% stamping fee, payable by broker or agent (see Other Comments section #4).
6. Mississippi adopted **NIMA** (HB 785) effective June 13, 2011, but subsequently submitted notice of withdrawal from **NIMA** on April 2012.
7. Mississippi **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

1. **Filing or Other Renewal Fee:** \$500 due May 1.
2. **Annual Statement/Report:** certified.
3. **Application:** executed by company's U.S. representative, if alien.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Alien insurers must have capital and surplus meeting the same requirements as foreign insurers and have a trust fund of the greater of: \$5.4 million or 30% of U.S. surplus lines gross liabilities, excluding aviation, wet marine and transportation liabilities, not to exceed \$60 million. §§ 83-21-17(1)(e)(i)-(ii). An alien insurer must also be listed on the NAIC Quarterly Listing of Alien Insurers. § 83-21-17(1)(h). Effective July 21, 2011, listing on the NAIC list is sufficient; no additional requirements need be met.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

A foreign insurer is eligible if the insurer has capital and surplus (or its equivalent under the laws of its domiciliary jurisdiction) equal to the greater of: the capital and surplus required of a company licensed to do business in Mississippi or \$15 million. §§ 83-21-17(1)(a)(i) – (ii). The insurance commissioner may waive these minimum capital and surplus requirements and a nonadmitted insurer may become eligible if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. § 83-21-17(1)(b). The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 83-21-17(1)(6).

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

Worker's Compensation insurance.

OTHER COMMENTS OR REQUIREMENTS:

1. Mississippi eligibility list available at <http://www.doi.state.ms.us/licapp/downloadlist.aspx>. Select "Company List" from the scroll down menu "Choose Company List to Download" then select "Surplus Lines – Alien" or "Surplus Lines – Foreign" from the scroll down menu "Choose License Type."
2. In order to be eligible, a foreign insurance company must not be designated as a regulatory priority company by the NAIC.
3. Contact information for the Mississippi Surplus Lines Association is as follows:
Peggy Dronet, Executive Director
Mississippi Surplus Lines Association
504 Keywood Circle, Suite B
Flowood, Mississippi 39232-3018
Tel.: (601) 713-1111
Fax.: (601) 713-1122
Website: www.msla.org.
4. Mississippi requires the surplus lines agent to collect a nonadmitted policy fee for any and all risks on real property and contents in

- Mississippi. This fee is effective on all nonadmitted real property and contents for policies effective January 1, 2008 and after. However, as of July 1, 2014, residential earthquake and residential flood risks are exempt from the nonadmitted policy fee. § 83-34-4(1).
5. Mississippi has eliminated the affidavit requirement and instead requires a surplus lines insurance producer to execute a form when any policy of insurance or certificate of insurance is procured under the authority of the producer's license. The form must set forth facts in complete detail as to what was done to place the insurance and showing that the producer, after diligent effort, was unable to procure from a licensed company or companies the full amount of insurance required to protect the property, liability, or risk desired to be insured. This form must be maintained on file with the surplus lines insurance producer and may be subject to review by the Mississippi Commissioner of Insurance.
 6. Every insurance contract procured and delivered must have stamped upon it in bold ten-point type, and bear the name of the agent who procured it, the following:
“NOTE: This insurance policy is issued pursuant to Mississippi law covering surplus lines insurance. The company issuing the policy is not licensed by the State of Mississippi, but is authorized to do business in Mississippi as a nonadmitted company. The policy is not protected by the Mississippi Insurance Guaranty Association in the event of the insurer’s insolvency.”
 7. In 2015 the Mississippi Department of Insurance issued Bulletin 2015-5, which amends due diligence search guidance that was provided in Bulletin 2012-4. Bulletin 2015-5 signifies a shift in policy that previously required retail agents to carry a surplus lines license even if placing insurance through a licensed surplus lines producer. The bulletin prescribes a new Retail Insurance Producer Nonadmitted Insurance Form (Attachment A in the new bulletin) for transactions where the retail producer, not licensed as a surplus lines broker, is able to perform the due diligence search before placing a policy through a licensed surplus lines broker.
 8. The Mississippi Legislature enacted legislation in 2017 eliminating the requirement that a diligent search of the admitted market be made before placing insurance with a surplus lines producer thus making Mississippi the fourth state to eliminate the diligent search requirement, joining Louisiana, Virginia and Wisconsin. The legislation also decreases from two to one the number of fire and casualty companies that a producer must be regularly commissioned to represent in order to obtain a surplus lines license and expands the necessary items that must be included in the acknowledgment provided to the insured for personal lines surplus lines policies including that coverage may or may not be available in the admitted market that may “provide greater protection with more regulatory oversight” and that losses shall not be paid by the Guaranty Association in the event of an insolvency. This Legislation applies to surplus lines policies that are quoted or bound on or after July 1, 2017.
 9. Annual filing fees for Mississippi foreign eligible surplus lines insurers should be filed in accordance with certain NAIC procedures: <https://www.mid.ms.gov/companies/pdf/statement-filing-requirements/foreignsurpluslinescompaniesannstatedilerequire.pdf>

MISSOURI

MO

GENERAL INFORMATION:

1. Missouri **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Missouri **does** have a Surplus Lines Association (see Other Comments section #3).
3. Missouri **does not** have an export list.
4. Missouri **does** have an industrial insured exemption that will remain effective (see Appendix C). The NRRA exempt commercial purchaser exemption was incorporated into Missouri law and became effective on 7/7/2011.
5. **Surplus lines tax:** 5% (less return premium, and exclusive of state, federal, and local taxes), payable by broker.
6. Missouri has not affiliated with any existing compact (SB 132).
7. Missouri **does** allow domestic surplus lines insurers in the state (see Other Comments section #11).

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

A surplus lines licensee shall not place coverage with a nonadmitted insurer unless the licensee determines that the nonadmitted insurer:

1. Meets the capital and surplus requirements of Missouri or \$15 million (the director may waive the financial requirements if the nonadmitted insurer's capital and surplus is at least \$4.5 million and the director finds the insurer is acceptable);
2. Appears on the most recent list of eligible surplus lines insurers published by the director or appears on the most recent Quarterly Listing of Alien Insurers maintained by the NAIC; and
3. Surplus lines carriers are requested to provide premium report by July 1 (see Other Comments section #6).

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

NAIC Listing automatically puts company on eligibility list.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. Licensed in home state.
2. \$15 million in capital and surplus.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

None.

OTHER COMMENTS OR REQUIREMENTS:

1. Missouri eligibility list available at www.insurance.mo.gov under "Agents" section.
2. A letter is required from the regulatory body having authority over the company's operations stating that, according to its records, the company is prompt and equitable in its loss payments to policyholders and payments are in accordance with policy provisions.
3. Contact information for the Surplus Lines Association of Missouri is:
Ann Monaco Warren
Inglish & Monaco, P.C.
237 East High Street
Jefferson City, MO 65101
Tel: 573-634-2522
awarren@inglishmonaco.com.
4. There is no bond requirement for either resident or non-resident surplus lines licensees.
5. Every evidence of insurance negotiated, placed or procured under the provisions of the Missouri surplus lines law and issued by a Missouri surplus lines licensee shall, on the face of the policy or declaration page of the policy, bear the name of the licensee and the following legend in 10-point type:

"This is evidence of insurance procured and developed under the Missouri Surplus Lines Laws. It is NOT covered by the Missouri Insurance Guaranty Association. This insurer is not licensed by the state of Missouri and is not subject to its supervision."

6. The report of Missouri business must include the name and address of the producer, name

and address of the insured, policy number, effective date of the coverage and premium amount. This document has no bar code and may be transmitted by email to surpluslines@insurance.mo.gov.

7. The Missouri Department of Insurance in 2006 clarified its view that surplus lines taxes apply to policy fees as well as premium taxes. The change appears in Missouri's Regulation, § 20 CSR 200-6.300 Surplus Lines Insurance Fees and Taxes. The department's explanation of the amendments to sections (1), (2) and (3) of this rule is as follows:

“This amendment clarifies that any fee charged in connection with the placement of surplus lines insurance is subject to the surplus lines insurance premium tax, regardless of whether the fee is charged by the surplus lines insurer or the surplus lines licensee. As such the amendment is consistent with the current practice of the department and is intended to halt the avoidance of tax by merely shifting the stated source of fees from the insurer to the licensee.”

8. All surplus lines licensees are required to hold an underlying Property and Casualty producer license as a pre-requisite to obtaining and maintaining the surplus lines license. Producer licenses are renewed on a biennial basis on the license anniversary date. The aforementioned surplus lines provisions have no effect upon producer licenses.
9. Appendix One filing, which was required to be filed within 30 days of placement, is now required within 45 days of the end of the quarter in which the placement was made.
10. In 2011 the Missouri legislature enacted Senate Bill 132 (SB 132) which adopts amendments to the insurance code to comply with the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) relating to surplus lines insurance.

The legislation added the terms “exempt commercial purchaser”, “home state”, “nonadmitted insurance” and “qualified risk manager” to the definition section of the Missouri Surplus Lines Law. The definitions for such terms are consistent with the NRRA (15 USC 8206)(Section 384.015).

Under the terms of the act, a surplus lines licensee seeking to place nonadmitted insurance

in Missouri for an exempt commercial purchaser shall not be required to satisfy any requirement to make a due diligence search to determine whether the full amount or type of insurance by the exempt commercial purchaser can be obtained from nonadmitted insurers if:

- the surplus lines licensee placing the surplus lines insurance has disclosed to such exempt commercial purchaser that the insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and
- the exempt commercial purchaser has subsequently requested in writing the surplus lines licensee to place such insurance from a nonadmitted insurer (Section 384.021).

11. The Missouri Legislature enacted Legislation allowing for the creation of domestic surplus lines insurers. The Legislation also specifies that a nonadmitted insurer that is domiciled in the state may be deemed a domestic surplus lines insurer if the:

- insurer possesses policyholders' surplus of at least \$20 million;
- insurer is an approved or eligible surplus lines insurer in at least one jurisdiction other than Missouri;
- board of directors of the insurer has passed a resolution seeking to be a domestic surplus lines insurer in Missouri; and
- Director of the Department of Insurance, Financial Institutions and Professional Registration has given written approval for the insurer to be a domestic surplus lines insurer.

GENERAL INFORMATION:

1. Montana **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Montana **does** have a Surplus Lines Association (see Other Comments section #3).
3. Montana **does** have an Export List (see Other Comments section #4).
4. Montana **does** have an industrial insurance exemption applicable to captive insurers only (see Appendix C). Montana has also adopted the NRRRA exempt commercial purchaser exemption.
5. **Surplus lines tax:** 2.75%, plus 0.25% stamping fee if policy is mailed to Office of the Commissioner of Securities and Insurance with a policy effective date on or after 1/1/2012 (0% stamping fee if policy is filed electronically by agent) and 2.5% additional tax on fire portions of surplus lines placements), payable by agent.
6. Montana has not affiliated with any existing compact although the Commissioner may enter into a cooperative or reciprocal agreement with other states, individually or collectively, (SB 331).
7. Montana **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

1. **NAIC Listing.**
2. **Trust Fund:** \$5,400,000.
3. **Statement of Assets in Trust.**
4. **IID Financial Reporting Format.**
5. Brokers may not place insurance with any alien insurer unless the alien insurer appears on the NAIC's Quarterly List of Alien Insurers. §33-2-307(2)

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

A surplus lines broker may not place coverage with a nonadmitted insurer unless, at the time of placement, the nonadmitted insurer:

- is authorized to write such insurance in its domiciliary jurisdiction; and possesses capital

and surplus, or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of Montana or \$15 million.

The commissioner may waive the minimum capital and surplus requirement for a nonadmitted insurer if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. § 33-2-307(1)(b)(ii). The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 33-2-307(1)(b)(ii).

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Wet marine and transportation insurance.
2. Insurance on subjects located, resident, or to be performed wholly outside of Montana or on vehicles or aircraft owned and principally garaged outside Montana.
3. Insurance on property or operation of railroads engaged in interstate commerce.
4. Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of the aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of the aircraft.

OTHER COMMENTS OR REQUIREMENTS:

1. Montana eligibility list available at <http://sao.mt.gov/forms/exams/lists/biannlist.pdf>.
2. All surplus lines business must be written through a surplus lines producer that is authorized by the Montana Insurance Department.
3. The Montana DOI took over the operations of the Montana Surplus Lines Stamping office, beginning July 1, 2009. The Montana Surplus Lines Agent's Association continues as a

- nonprofit organization with the mission to serve surplus lines producers.
4. Montana Export List available at Montana Surplus Lines Association website at <https://csimt.gov/wp-content/uploads/Approved-Risk-5-6-19.pdf> or at the Montana DOI website at <http://SAO.mt.gov/-forms/exams/lists/biannist.pdf>.
 5. The diligent search requirement (3 declinations from admitted carriers) does not apply for a surplus lines broker if, by placing the account in the surplus lines market, there is a premium savings that is greater than **10%**. A diligent search is not required for coverages listed on Montana's Export List.
 6. Each insurance contract, cover note, or certificate of insurance procured and delivered as surplus lines insurance in Montana must be filed with the commissioner, or with the surplus lines advisory organization formed pursuant to § 33-2-321 of the Montana Insurance Code, and endorsed as **"issued in an unauthorized insurer under The Surplus Lines Insurance Law, under surplus lines insurance producer's license No."** and **"NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent."** The surplus lines producer must properly fill in and sign the endorsement.
 7. Montana amended its insurance code to revise certain definitions and update certain provisions relating to surplus lines insurance effective March 7, 2019. Section 33-2-301(3)(t)(i) of the Montana insurance code amended its definition of "surplus lines insurance" to include inland marine insurance. Revisions to Section 33-2-302(2)(a) that address conditions precedent to the sale of surplus lines insurance include the deletion of terms that provide that a producer must show that the insurance is not procured for the purpose of securing a lower premium rate than would be accepted by an authorized insurer or for an advantage in terms of the insurance contract. Section 33-2-302(2)(b) adds a provision to exempt producers from the diligent search requirement of subsection (2)(a)(ii) if the premium quoted by an authorized insurer is at least ten percent (10%) higher than the rate quoted by the unauthorized, eligible surplus lines insurer.
 8. Montana enacted legislation in 2019 which eliminates requirements that surplus lines insurers must appoint the Insurance Commissioner as agent for service of process and instead requires surplus lines insurers to designate a registered agent for service of process.

GENERAL INFORMATION:

1. Nebraska **does not maintain** a list of eligible surplus lines insurers.
2. Nebraska **does not** have a Surplus Lines Association.
3. Nebraska **does not** have an Export List.
4. Nebraska **does not** have an industrial insured exemption (statutory exemption repealed upon enactment of NRRRA) but the NRRRA's Commercial Purchaser Exemption is in effect. §44-5502).
5. **Surplus lines tax:** 3%, payable by broker (see Other Comments section #4).
6. Nebraska **does** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

A surplus broker may not place coverage with any alien insurer unless it appears on the NAIC's Quarterly List of Alien Insurers. § 44 5508(2).

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

A surplus lines broker may not place coverage with a nonadmitted foreign insurer unless, at the time of placement, the nonadmitted insurer:

- is authorized to write such insurance in its domiciliary jurisdiction;
- has established satisfactory evidence of good repute and financial integrity; and
- possesses capital and surplus — or its equivalent under the laws of its domiciliary jurisdiction — that equals the greater of the minimum capital and surplus requirements under the laws of Nebraska or \$15 million.

The director may waive the minimum capital and surplus requirement for a nonadmitted insurer if the director makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. §44-5508(1)(c)(ii). The director may not make a

finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 44-5508(1)(c)(ii).

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Transactions in the state, relative to policies issued or to be issued outside the state, involving insurance on vessels, crafts or hulls, cargoes, marine builders' risks, marine protection and indemnity or other risks, including strikes and war risks commonly insured under ocean or wet marine forms of policy.
2. Life insurance, variable life, variable annuities and sickness and accident insurance. (Note: disability insurance that has a benefit limit in excess of any benefit limit available from an admitted insurer may be placed through the surplus lines market).

OTHER COMMENTS OR REQUIREMENTS:

1. Burden is on broker to ascertain existence of trust fund.
2. A surplus lines licensee must stamp or type upon the declaration page of each policy procured and delivered the following information:

(a) The licensee's name, business address, and surplus lines license number; (b) the name under which the licensee transacts business if different than the licensee's own name; and (c) the language:

“This policy is issued by a nonadmitted insurer, and in the event of the insolvency of such insurer, this policy will not be covered by the Nebraska Property and Liability Insurance Guaranty Association.”

3. Nebraska permits the procurement of sickness and accident insurance from a nonadmitted insurer under the Surplus Lines Insurance Act. This does not prohibit the procurement of disability insurance that has a benefit limit in excess of any benefit limit available from an admitted insurer.

4. Effective January 1, 2017, all surplus lines premium where Nebraska is the home state of the insured are taxed 100% at Nebraska's rate of 3%.
5. Nebraska enacted legislation in 2019 to allow for domestic surplus lines insurers in the state. Under the Nebraska law, a domestic surplus lines insurer (a) must possess policyholder surplus of at least fifteen million dollars; (b) is an eligible surplus lines insurer in at least one state jurisdiction other than Nebraska; and (c) is acting pursuant to a resolution passed by the insurer's board of directors seeking to be a domestic surplus lines insurer in Nebraska. All financial and solvency requirements apply to a domestic surplus lines insurer (unless specifically exempted). Further, policies issued by a domestic surplus lines insurer are not subject to the protections or other requirements of the Nebraska Property and Liability Insurance Guaranty Association Act or the Nebraska Life and Health Insurance Guaranty Association Act.

GENERAL INFORMATION:

1. Nevada **does not maintain** a list of eligible surplus lines insurers.
2. Nevada **does** have a Surplus Lines Association (see Other Comments section #2).
3. Nevada **does** have an Export List (see Other Comments section #1).
4. Nevada **does** have an industrial insured exemption (see Appendix C) which will remain in effect. Nevada has also incorporated the NRRRA exempt commercial purchaser exemption.
5. **Surplus lines tax:** 3.5%, payable by broker, plus .4% stamping fee applicable to all premiums. (Penalty of \$500 for “failure to pay taxes” within 45 days after the quarter ends).
6. On June 29, 2012, Nevada submitted a notice of withdrawal from NIMA. On July 2, 2012, Nevada released Bulletin 12-005 indicating it will collect 100% of the non-admitted insurance premium tax when Nevada is the home state of the insured. Where Nevada is not the home state of the insured, no premium tax filing in Nevada will be required.
7. On June 1, 2019, Nevada enacted legislation (effective October 1, 2019) that **does** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

The Nevada Division of Insurance no longer has the authority to maintain a list of eligible insurers and there are no requirements that a foreign or alien insurer must meet other than the objective eligibility criteria specified in the Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA) and reaffirmed in Chapter 685A of NRS, as amended by Senate Bill 289.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

A broker may not place surplus lines insurance with an alien insurer, unless the alien insurer is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC, or, if the alien insurer is not listed on the

Quarterly Listing of Alien Insurers, it has and maintains in a bank or trust company which is a member of the US Federal Reserve System a trust fund established pursuant to terms that are reasonably adequate to protect all of its policyholders in the US. Such a trust fund must not have an expiration date which is at any time less than 5 years in the future, on a continuing basis.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. A surplus lines broker may place insurance with a nonadmitted foreign insurer if:
 - the insurer is authorized to place that type of insurance in its domiciliary jurisdiction; and
 - the insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that is the greater of the minimum capital and surplus requirements under the laws of this state or \$15 million.
2. The insurance commissioner may waive the minimum capital and surplus requirements for unauthorized foreign insurers if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer’s capital and surplus is under \$4.5 million. NRS 685A.070(3)

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Wet marine and transportation insurance.
2. Insurance on subjects located, resident, or to be performed wholly outside of Nevada or on vehicles or aircraft owned and principally garaged outside Nevada.
3. Insurance of property and operations of railroads engaged in interstate commerce.
4. Insurance of aircraft of common carriers, or cargo of such aircraft, or against liability, other

- than employer's liability, arising out of the ownership, maintenance, or use of such aircraft.
5. Insurance of automobile bodily injury and property damage liability risks when written by Mexican insurers and covering Mexican, but not U.S. risks.

OTHER COMMENTS OR REQUIREMENTS:

1. Nevada export list available at www.nsla.org/Export_List/Export_List.aspx. There is also a list of coverages that are ineligible for automatic export at http://www.nsla.org/Ineligible_For_Export_List/Ineligible_For_Export_List.aspx.
2. Contact information for the Nevada Surplus Lines Association is as follows:
Maria Muzea, Executive Director
Nevada Surplus Lines Association
6490 S. McCarran Blvd, Building D-2 #39
Reno, Nevada 89509
Tel.: (775) 826-7898
Fax.: (775) 826-7003
Email: Maria@nsula.org.

3. Each insurance contract procured and delivered as a surplus lines coverage must have conspicuously stamped upon it:

“This insurance contract is issued pursuant to the Nevada insurance laws by an insurer neither licensed by nor under the supervision of the Division of Insurance of the Department of Business and Industry of the State of Nevada. If the insurer is found insolvent, a claim under this contract is not covered by the Nevada Insurance Guaranty Association Act.”

NEW HAMPSHIRE

NH

GENERAL INFORMATION:

1. New Hampshire **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. New Hampshire **does** have a Surplus Lines Association.
3. New Hampshire **does not** have an Export List.
4. New Hampshire **does** have an industrial insured exemption (see Appendix C) which will remain in effect. The NRRRA commercial purchaser exemption is also effective as per NH DOI Bulletin 8/15/2011.
5. **Surplus lines tax:** 3%, payable by broker (see Other Comments section #4).
6. New Hampshire has not affiliated with any existing compact but the Commissioner may enter into a cooperative or reciprocal agreement or compact with other states. New Hampshire continues to tax a multi-state policy at the tax rates of the exposure states. (NB 424).
7. New Hampshire **does** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

1. **Application form.**
2. Proof that company is on **IID list** (Alien).
3. **Eligibility and Filing Requirements** (Foreign)
4. **\$250 non-refundable fee:** payable to "NH Insurance Department".
5. **Certificate of Compliance** from the Surplus Lines Insurer's state/country of domicile.
6. Page 3 (liabilities, surplus and other funds) of current Annual Statement/Quarterly Statement (Foreign).
7. To maintain status on the list of eligible surplus lines insurers the information above must be submitted annually by March 15th.

NOTE - Foreign non-admitted Surplus Lines insurers that were required to maintain a security deposit in New Hampshire prior to July 21, 2011, may request to have their New Hampshire security deposit released by submitting a written request (no e-mail or faxed request will be accepted) on company letterhead.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Transactions in New Hampshire relative to a policy issued or to be issued outside New Hampshire involving insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.
2. Ocean marine insurance.
3. Industrial insurance.

OTHER COMMENTS OR REQUIREMENTS:

1. New Hampshire eligibility list available at <https://www.nh.gov/insurance/companies/surplusslines/documents/surplus-lines-company-list.pdf>.
2. Effective May 1, 2010, the New Hampshire Insurance Commissioner transferred the electronic Surplus Lines submissions of forms and payment processing operations to OPTins (Online Premium Tax for Insurance), a product of the National Association of Insurance Commissioners.
3. Every producer must have stamped in a form approved by the commissioner on the face of the binder or policy the following:

"The company issuing this policy has not been licensed by the state of New Hampshire and the rates charged have not been approved by the commissioner of insurance. If the company issuing this policy becomes insolvent, the New Hampshire insurance guaranty fund shall not be liable for any claims made against the policy."
4. New Hampshire enacted legislation in 2019 providing for a flat premium tax to be levied on non-admitted insurance with multiple risks and when New Hampshire is the home state. The new law imposes a flat tax of either 3% or 4% depending upon the type of policy, and became effective on January 1, 2020.

GENERAL INFORMATION:

1. New Jersey **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. New Jersey **does** have a Surplus Lines Association (voluntary participation) but **does not** have a stamping office (see Other Comments section #2).
3. New Jersey **does** have an Export List (see Other Comments section #1, #6 and #9).
4. New Jersey **does** have an industrial insured exemption and has also adopted the NRRRA definition of exempt commercial purchaser.
5. **Surplus lines tax:** 5%, payable by surplus lines producer. For fire premiums written in NJ on or after 7/1/09, 3% of the premium receipts tax covering fire insurance should be paid to the Treasurer of the New Jersey State Firemen's Association, and the remaining 2% of the premium receipts tax to the Commissioner of Banking and Insurance (pursuant to NJ Bulletin No. 09-21).
6. New Jersey has not affiliated with any existing compact but Commissioner is authorized to enter into, modify and to terminate the state's participation in one or more compacts (SB 2930) Effective: July 21, 2011.
7. New Jersey **does** allow domestic surplus lines insurers in the state (see Other Comments section #7).

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

Pursuant to N.J.A.C.11:19-3, New Jersey requires all eligible surplus lines insurers to maintain and file with the Department Of Banking and Insurance a report listing all policies/direct premiums written for New Jersey insureds. All eligible insurers are requested to submit this information by April 1 using the Surplus Lines Automation Suite/Surplus Lines Information Portal.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

None, alien insurers only need to be on IID List.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. **Letter of Intent.**
2. **Annual Statement.**
3. **Certificate of Compliance** from state of domicile (must be filed annually with the DOI).

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Railroad or aviation risks engaged in interstate or international commerce.
2. Insurance of vessels, crafts or hulls, cargoes, marine builders' risks, marine protection and indemnity or other risks including strikes and war risks commonly insured under ocean or wet marine forms or policies.

OTHER COMMENTS OR REQUIREMENTS:

1. Eligibility and export lists available at <http://www.state.nj.us/dobi/sleo.htm>.
2. New Jersey Surplus Lines Association website is www.njsla.org.
3. Effective 2003, New Jersey eliminated the form approval requirements for surplus lines policies which brings New Jersey in line with all other states in providing surplus lines carriers freedom of form.
4. At the time of quotation, the originating producer shall provide to the applicant a copy of the form incorporated herein by reference as Exhibit A-1 in the Appendix to this chapter and retain a signed copy.

APPENDIX EXHIBIT A-1

Form to be used at the time of quotation:

The undersigned applicant has been advised by the undersigned originating insurance producer and understands that an insurance policy written by a surplus lines insurer is not subject to the filing or approval requirements of the New Jersey Department of Banking and Insurance. Such a policy may contain conditions, limitations, exclusions and different terms than a policy issued by an insurer granted a

Certificate of Authority by the New Jersey
Department of Banking and Insurance.

Applicant Signature

Applicant's Name (Print or Type)

Date of Applicant's Signature

Producer Signature

Producer Name (Print or Type)

Date of Producer Signature

New Jersey Producer License Reference Number

5. The following statement must appear on all Surplus Lines Policies, Evidence of Coverage and Renewal Policies or be provided or as a standalone notice:

For policies placed through surplus lines insurers domiciled in New Jersey:

Notice to policyholder: This policy is written by a domestic surplus lines insurer, an eligible unauthorized insurer pursuant to section 2 of P.L.2011, c.39 (C.17:22-6.69b) and is not subject to the rate or form filing or approval requirements of the New Jersey Department of Banking and Insurance. This policy may contain conditions, limitations, exclusions and different terms than a policy otherwise issued by a New Jersey authorized or admitted insurer. This policy is not covered by the New Jersey Property-Liability Guaranty Association. This policy may be covered by the New Jersey Surplus Lines Insurance Guaranty Fund, but only to the extent provided pursuant to section 2 of P.L.1984, c.101 (C.17:22-6.71).

For policies placed through foreign or alien surplus lines insurers:

“This policy is written by a surplus lines insurer and is not subject to the filing or approval requirements of the New Jersey Department of Banking and Insurance. Such a policy may contain conditions, limitations, exclusions and different terms than a policy

issued by an insurer granted a Certificate of Authority by the New Jersey Department of Banking and Insurance. The insurer has been approved by the Department as an eligible surplus lines insurer, but the policy is not covered by the New Jersey Insurance Guaranty Fund, and only a policy of medical malpractice liability insurance as defined in N.J.S.A. 17:30D-3d or a policy of property insurance covering owner-occupied dwellings of less than four dwelling units are covered by the New Jersey Surplus Lines Guaranty Fund.”

6. New Jersey amended its export list in 2009 to add “special risk disability and personal accident coverage” and “livestock gross margin policies” to the list.
7. New Jersey enacted legislation in 2011 to allow a domestic insurer possessing policyholders’ surplus of at least \$15 million may, pursuant to a resolution by its board of directors, and upon the written approval of the Commissioner of Banking and Insurance, to be designated as a domestic surplus lines insurer. Under this legislation, the domestic surplus lines insurer is precluded from writing policies of private passenger automobile insurance, worker’s compensation, or worker’s occupational disease insurance. Insurance written by a domestic surplus lines insurer would also be subject to the 5% surplus lines tax.

This legislation also provides that whenever any insurance risk or any part thereof is placed with a domestic surplus lines insurer, the policy, binder or cover note needs to bear conspicuously on its face in boldface, the following notation: “Notice to Policyholder: This policy is written by a domestic surplus lines insurer, an eligible unauthorized insurer pursuant to Section 2 of P.L.c(C) (pending before the New Jersey Legislature as this bill), and is not subject to the rate or form filing or approval requirements of the New Jersey Department of Banking and Insurance. This policy may contain conditions, limitations, exclusions and different terms than a policy otherwise issued by a New Jersey authorized or admitted insurer. This policy is not covered by the New Jersey Property Liability Guaranty Association. This policy may be covered by the New Jersey Surplus Lines Insurance Guaranty Fund, but only to the extent provided pursuant to Section 2 of P.L. 1984(c.101(C). 17:22-6.71).”

8. The New Jersey Department of Banking and Insurance in 2012 promulgated New Rule N.J.A.C. 11:1-28.4A which conforms the existing rules in New Jersey governing surplus lines allocation, eligibility, and procurement to the NRRRA. The purpose of the new rule is to help avoid any confusion regarding the application of the New Jersey Insurance Department's rules in light of the enactment of the NRRRA. The new rule also sets forth requirements for a domestic property/casualty insurer to be designated a domestic surplus lines insurer pursuant to N.J.S.A. 17:22-6.69b .
9. New Jersey updated its export list in 2014 to include private flood insurance. This was the only addition to the list, and there were no deletions.

GENERAL INFORMATION:

1. New Mexico **does** maintain a list of eligible surplus lines insurers (foreign insurers only).
2. New Mexico **does** have an industrial insured exemption which will remain in effect. The NRRA exempt commercial purchaser exemption is also in effect. (§ 59-14-2(F)).
3. **Surplus lines tax:** 3.003%, payable by broker.
4. New Mexico enacted Legislation in 2017 which eliminates **SLIMPACT** authorization.
5. New Mexico **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

Certificate of Compliance from domiciliary regulator due every March 1.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Alien insurers must be on the NAIC Quarterly Listing of Alien Insurers. § 59A-14-4(C)(3).

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

New Mexico added a specific provision on foreign insurer eligibility to the SLIMPACT Model (§ 59A-14-4(C)): Surplus lines brokers shall not place coverage with a nonadmitted insurer unless, at the time of placement, the nonadmitted insurer:

- is authorized to write such insurance in its domiciliary jurisdiction;
- has established satisfactory evidence of good repute and financial integrity; and
- possesses capital and surplus – or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of New Mexico or \$15 million.

The superintendent may waive the minimum capital and surplus requirement for a nonadmitted insurer if the superintendent makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent

company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. § 59A-14-4(C)(1)(b). The superintendent may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 59A-14-4(C)(1)(b).

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Wet marine and transportation insurance as defined in Section 59A-7-5 NMSA 1978.
2. Insurance on subjects located, resident, or to be performed wholly outside of New Mexico or on vehicles or aircraft owned and principally garaged outside New Mexico.
3. Insurance on property or operation of railroads engaged in interstate commerce.
4. Insurance of aircraft of common carriers, cargo of such aircraft, or against liability, other than employer's liability, arising out of the ownership, maintenance or use of such aircraft.
5. Insurance of automobile bodily injury and property damage liability risks when written by Mexican insurers and covering risks in Mexico and not in the U.S.
6. Insurance independently procured.

OTHER COMMENTS OR REQUIREMENTS:

1. Burden is on broker not to place insurance with financially unsound insurers whose capital and surplus is insufficient for the particular risk.
2. Every insurance contract procured and delivered as surplus lines insurance must bear the name, address and signature of the surplus lines broker who procured it and have stamped, printed or otherwise displayed prominently in boldface 10 point or larger type either upon its declarations page or by attachment of an endorsement, the form of which may be promulgated by the superintendent, the following:

“This policy provides surplus lines insurance by an insurer not otherwise authorized to transact business in New Mexico. This policy is not subject to supervision, review or

approval by the superintendent of insurance. The insurance so provided is not within the protection of any guaranty fund law of New Mexico designed to protect the public in the event of the insurer's insolvency."

3. New Mexico enacted Legislation in 2017 that eliminates the need for brokers to file surplus lines affidavits with the state. Instead, brokers now need to maintain a signed statement of diligent effort.

4. As of January 1, 2020, surplus line premium tax collection is performed by the New Mexico Taxation and Revenue Department. Relevant broker forms for the remittance of surplus line premium tax can found at the Taxation and Revenue Department website:
<https://www.tax.newmexico.gov>.

NEW YORK

NY

GENERAL INFORMATION:

1. New York excess lines brokers may only place insurance with those insurers that have made application to and been approved by the Excess Line Association of New York (ELANY) and agree to abide by N.Y. Regulation 41. (Eligibility list available on ELANY website at <http://www.elany.org/nyes.aspx?d=1002> (foreign);
2. New York **does** have an Excess Line Association (see Other Comments section #5).
3. New York **does** have an Export List at www.elany.org (see Other Comments section #11, #13, and #18).
4. New York **does** have an industrial insured exemption applicable to captive insurers only (see Appendix C) and also recognizes the exempt NIRA commercial purchaser exemption (§ 2101(x)(2)).
5. **Surplus lines tax:** 3.6%, payable by broker to the state, plus 0.17% stamping fee payable to ELANY (reduced from 0.18% effective 1/1/2017) (Additional fee of \$25 applies for late/erroneous filing).
6. New York has not affiliated with any existing compact but has adopted legislation allowing it to keep 100% of surplus line premium tax where New York is the home state (SB 2811).
7. New York **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

The New York law did incorporate NIRA eligibility provisions.

Section 27.13 of New York Regulation 41 requires that prior to placing business with an eligible excess line insurer, when the insured's home state is New York, an excess line broker must obtain, review and retain at least the following documents [unless ELANY obtains and retains these documents]:

1. Copy of insurer's most recent Annual Statement (foreign insurer).
2. If an alien insurer, evidence that it appears on the most recent NAIC IID list of alien insurers.

3. Copy of insurer's latest available report on examination, if applicable.
4. A certificate of authority from the insurer's home jurisdiction verifying that such insurer is authorized to write the kinds of insurance sought to be placed.

Although ELANY publishes on its website a list of unauthorized insurers which meet the minimum requirements of eligibility in New York, it remains the non-delegable duty of the excess line broker to use "due care" in the selection of any such insurer.

(Note: Effective January 1, 2019, New York has a \$47 million capital and surplus requirement applicable to U.S. excess line insurers; Alien insurers must maintain the minimum capital and surplus requirement by the NAIC.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Ocean marine insurance, which is limited to vessels engaged in the transportation of goods and merchandise in either foreign or coast wide trades. However, such insurance coverage must still be placed through a licensed insurance producer in the state (although not necessarily a surplus lines broker). It does not include yachts, pleasure crafts, fishing vessels and tugs (see Other Comments section #1).
2. Insurance in connection with ocean going vessels against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.
3. Insurance against legal liability arising out of the ownership, operation or maintenance of any motor vehicle or aircraft which is neither principally garaged nor principally used in New York, arising out of any activity carried on wholly outside of New York or arising out of the ownership, operation or maintenance of any

property having a permanent situs outside of New York, but in case such property or risk is located in any other state, then exemption applies only if the insurer is authorized to do such business in such state and a licensed insurance broker of such state may lawfully place such insurance.

OTHER COMMENTS OR REQUIREMENTS:

1. New York Circular Letter No. 28 (1999) clarifies the Department's position that if a risk is placed by an unauthorized insurer involving a class of insurance other than ocean marine insurance, it should only be placed through an excess line broker licensed in New York. Such business must also be written pursuant to the surplus lines laws of the State of New York. Circular Letter No. 28 also states that it is the broker's responsibility to allocate the risk between ocean marine insurance and any other kind of insurance. Part of the risk that is other than ocean marine insurance, when placed with an unauthorized insurer, is subject to the payment of an excess line premium tax for the filing of affidavits and the stamping of the policies by ELANY as well as other applicable regulatory requirements of the Department. Circular Letter No. 22 (2000) opines that ocean marine insurance is "insurance covering damage to ships or vessels and the goods they carry while on the ocean or inland waters." While Circular Letter No. 22 does not so state, the Department has confirmed that pure marine protection and indemnity insurance is treated in the same manner as ocean marine insurance.
2. All filings must be submitted to both New York Department of Financial Services (NYDFS) and ELANY unless otherwise stated. Electronic filing of broker affidavits as well as the electronic submissions for recording and stamping of declaration pages, cover notes, binders, endorsements, notices of excess line placement and other excess line insurance documents are permitted provided these methods of submitting for recording and stamping purposes are first approved by the Superintendent.
3. New York no longer requires the completion or filing of insured's affidavit (Part B) in connection with excess line placements. Instead of the insured's affidavit requirement, the law substitutes a requirement that such insureds be

given notice containing certain information set forth in Section 27.5(e) of Regulation 41.

4. New York permits binding authority for licensed New York excess line brokers upon written authorization of non-admitted insurers. This binding authority power was extended by chapter amendment to include both in-state and out-of-state risks.
5. Contact information for ELANY is as follows:
Daniel F. Maher
Excess Line Association of New York
One Exchange Plaza
55 Broadway, 29th Floor
New York, New York 10006-3728
Tel.: (646) 292-5500
Fax.: (646) 292-5505
Email: dmaher@elany.org.
6. The following language must be stamped on every excess lines insurance policy, memorandum, certificate or other document evidencing insurance coverage delivered to a New York insured in not less than ten point bold type:

"THE INSURER(S) NAMED HEREIN IS (ARE) NOT LICENSED BY THE STATE OF NEW YORK, NOT SUBJECT TO ITS SUPERVISION, AND IN THE EVENT OF THE INSOLVENCY OF THE INSURER(S), NOT PROTECTED BY THE NEW YORK STATE SECURITY FUNDS. THE POLICY MAY NOT BE SUBJECT TO ALL OF THE REGULATIONS OF THE DEPARTMENT OF FINANCIAL SERVICES PERTAINING TO POLICY FORMS."
7. New York permits excess lines brokers to place malpractice insurance for nursing homes and certain other facilities. For these types of risks, three declinations from insurers writing malpractice insurance are required. For doctors, dentists and general hospitals, a declination must be obtained from the resident market, known as the "MMIP" or the "Pool," before placing primary coverage with an excess line insurer. On January 7, 2021, New York introduced Senate Bill S714 and Assembly Bill A996, which, if passed into law, would eliminate the currently required declinations with respect to medical malpractice coverages for doctors, dentists and general hospitals.
8. The Office of General Counsel of the NYDFS issued two opinions in 2007 which state that policy fees charged by an excess line insurer are

- to be considered excess line premium subject to the excess line tax and the ELANY stamping fee.
9. The 10th amendment to Regulation No. 41 was promulgated on December 19, 2007. This amendment changes the maximum deposits required in which Alien insurance companies eligible in New York must put in trust to secure payment of judgments. The amendment is intended to conform New York regulation to new trust fund requirements adopted by the International Insurers Department of the National Association of Insurance Commissioners.
 10. New York adopted legislation in 2008 amending Insurance Law Sections 2601 and 3420 and Section 3001 of the Civil Procedure Law and Rules (“CPLR”). Among other things, the Legislation prohibits insurers from denying a claim under policies issued in New York after January 17, 2009 based on late notice unless the insurer can show that it was prejudiced by the untimely notice, and would also allow an underlying plaintiff to bring a declaratory judgment action directly against the tortfeasor's insurer under limited circumstances. The New York Insurance Department also issued a Circular Letter 26 (2008), dated November 18, 2008, to clarify that the Legislation applies to “all liability policies,” including renewals, issued or delivered in New York on or after the Legislation's effective date, including those policies issued in the excess/surplus lines market. It therefore appears that that the Legislation's treatment of claim's made policies will apply to claims-made policies which may only be issued in New York by unauthorized insurers through the excess/surplus lines market.
 11. The NYDFS in 2009 promulgated the 11th Amendment to Regulation 41 in order to expand the export list effective for placements on or after September 2, 2009. The new coverages added to the export list include: commercial excess and umbrella liability (over \$10,000,000), commercial property (excess of \$50,000,000), contract frustration, employed lawyers liability, construction contractors liability coverage, owner's contractor's protective, prize indemnification, special events and vacant commercial property.
 12. On April 18, 2011, the Superintendent of the NYDFS promulgated the **12th Amendment to Regulation 41** (the “Amendment”). Pursuant to the Amendment, excess lines insurers obtaining eligibility in New York on or after January 1, 2011 must maintain surplus to policyholders of at least \$45,000,000, instead of \$15,000,000. Excess lines insurers that obtained eligibility in New York prior to January 1, 2011 will be required to increase the amount of surplus to policyholders from \$15,000,000 to \$45,000,000 incrementally over the next few years. Specifically, excess lines insurers that became eligible in New York prior to January 1, 2011 must maintain surplus to policyholders of at least \$25,000,000 by July 1, 2011, \$35,000,000 by January 1, 2012 and \$45,000,000 by January 1, 2013.
 13. On April 21, 2011, the NYDFS issued a proposed draft **13th Amendment to Regulation 41** for public comment. The proposed Amendment expands the types of risks to be added to the so-called “export list.” Some of the proposed risks to be included on the New York export list include Builders Risk insurance, Elevator Service and Maintenance Contractors – Liability and Property Damage, Excess Professional/Errors & Omissions Liability – All Classes, Excess Salary Protection (Disability) Insurance, Large Law Firm Lawyers' Professional Liability Insurance and Primary and/or Excess “Liability” Insurance for vacant or unoccupied buildings.
 14. On July 22, 2011, the NYDFS issued the **14th Amendment to Regulation 41 and Circular Letter No 9 (2011)** which addresses the allocation issue when a risk has exposures both in the U.S. and outside of the U.S. The state has now indicated that only that portion in the U.S. shall be taxed by NY. The amendment also changed the trust fund requirements. The trust fund was previously a condition of eligibility but it is now a substitute for pre-answer collateral. The NRRA prohibited eligibility requirements imposed by a state outside of capital and surplus requirements and the requirement that the insurer be in good standing in its home state.
 15. The New York State Department of Taxation and Finance issued a technical memorandum

- regarding changes to NY Tax Law Article 33-A. These changes were necessitated in order to conform to the requirements of the Nonadmitted and Reinsurance Reform Act (NRRRA) for independently procured insurance. The memorandum advises that for taxable insurance contracts independently procured from an unauthorized insurer with an effective date on or before July 21, 2011, tax payers should use form **CT-33-D(4/11)** and for taxable insurance contracts independently procured from an unauthorized insurer with an effective date **on or after** July 21, 2011, taxpayers should use form, **CT-33-D(7/11)**. The fundamental difference in these forms is that transactions effective on or before July 20, 2011 continue to be tax allocated while transactions effective on or after July 21, 2011 are taxed on 100% of the gross written premium.
16. On July 22, 2011, the NYDFS issued Circular Letter No. 9(2011) regarding “home state” determination for purchasing group (PG) members.

The Circular Letter states that excess line brokers must file affidavits and related individual certificate of insurance for each individual New York “home stated” member of the PG and pay premium taxes only to New York for New York “home stated” PG members. However, only one set of declinations and one master affidavit is required for each purchasing group for all members of the purchasing group enrolled in a given month.
 17. On March 12, 2012 the NYDFS issued Supplement No. 1 to Insurance Circular Letter No. 9. The purpose of this supplement to Circular Letter No. 9 is to provide guidance and clarification to all insurers eligible to write excess line insurance in New York and to all excess line brokers regarding the termination of trusts established pursuant to New York Regulation 41 prior to the July 21, 2011 effective date of NRRRA. Under Supplement No. 1, if an unauthorized foreign or alien insurer wishes to terminate a trust that has been established pursuant to New York Regulation 41 prior to July 21, 2011, then the insurer must do so in conformance with the trust fund agreement.
 18. The NY DFS expanded the export list in 2013 effective for placements made on or after April 10, 2013.

The “export list” sets forth types of insurance coverages that the New York Superintendent of the Department of Financial Services has determined are generally not available from licensed insurers. Three declinations are not required for export list coverages. Risks on the “export list” only exempt.

The following new coverages added to the export list will require no declinations:
Asbestos, Fungi and Water Damage Remediation and Removal
 Liability and Property Damage.
Builders Risk Insurance
 Coverage for construction projects where the total insured values exceed \$10,000,000.
Elevator Service and Maintenance Contractors
 Liability and Property Damage.
Excess Professional/Errors & Omissions Liability – All Classes
 Excess liability coverage where the underlying policy limits and/or self-insured retention is at least \$10,000,000 per occurrence.
Excess Salary Protection (Disability) Insurance as a monoline policy
 Insurance pursuant to Insurance Law section 1113 (a)(31)(A) against financial loss caused by the cessation of earned income due to disability from sickness, ailment or bodily injury, in an amount up to that portion of an individual’s annual earned income, which is in excess of the amount of in-force disability insurance from an authorized insurer, [in amount not to exceed 75% of the individual’s annual earned income in total based upon the sum of in-force disability insurance and salary protection insurance when benefits are payable to individual or individual’s beneficiary.]
Large Law Firm Lawyers’ Professional Liability Insurance (LPL)
 Professional liability for a law firm that has more than 100 attorneys.
Recreational Guide Services
 Coverage for outfitters and guides for Camping, Hiking, Rafting, Bungee Jumping, Parachuting, Hunting and Fishing Clubs, Shooting Ranges, Hunting and Fishing and similar recreational activities.
Vacant or Unoccupied Buildings
 Primary and/or Excess “Liability” Insurance for vacant or unoccupied Buildings.
 19. The following changes were included in the final adopted version of the 14th Amendment to Regulation 41:
 - a) Neither ELANY nor excess line brokers will be required to obtain:

- an insurer's prospective three year business plan,
 - an executed copy of the insurer's trust agreement and periodic "funds in trust statement" from the trustee, alien insurer IID Standard Financial Statements. (See II, 3 below)
- b) Foreign insurers will no longer be required to establish a \$2.5 million trust fund. Such trust funds which currently exist may be terminated in accordance with the terms of the trust agreement.
- c) Service of Process/Consent to Jurisdiction.
- §27.16 of Regulation 41 is deleted. This removed from the regulation **but Not From the Insurance Law** requirements regarding consent to service of process and appointing the superintendent as agent for service of process. Eligible insurers should note that New York Insurance Law §1213(c) exempts unauthorized insurers from posting collateral or pre-answer security in litigation on risks placed through excess line brokers when the policy designates the superintendent as the lawful attorney upon whom lawful process may be served.
- d) The following obligations are now directed at insurers where previously the excess line broker was responsible to verify the insurers conduct:
- the insurer will be directly required to file an electronic EL-1 report on March 15th each year setting forth each New York excess line transaction bound in the prior calendar year;
 - unauthorized insurers will be directly prohibited from selling a) types of coverage which the excess line law bars excess line brokers from selling, b) coverages which are not recognized as legal types of insurance in New York, c) coverages which are prohibited by public policy; and
 - insurers will be directly required to treat payment of premium to the excess line broker as payment to the insurer.
- The following provisions of Regulation 41 remain unchanged:
- a) Excess line brokers will continue to be required to obtain the following unless ELANY obtains these documents:
- a copy of a foreign insurer's most recent Annual Statement;
 - evidence that the insurer is on the current IID Quarterly listing (alien insurers only);
 - a copy of the insurer's latest Report on Examination, only if accessible to the excess line broker; and
 - a certificate of authority from the insurer's home jurisdiction verifying the kinds of insurance the insurer is permitted to underwrite.
- b) Effective 1/1/2017, foreign insurers must maintain at least \$46M of policyholder surplus to be eligible.
- c) Also, excess line brokers shall not place coverage with an insurer unless the insurer's Financial Statements or other evidence demonstrates:
- the insurer is solvent and otherwise complies with the solvency requirements for the authorized insurers;
 - has surplus sufficient to support its writings, reasonable in relation to its outstanding liabilities and adequate to its financial needs;
 - claims practices have been, and continue to be, satisfactory; and
 - management is trustworthy and competent.
- d) Any time an excess line insurer does not meet the standards noted above, an excess line broker must:
- cease procuring from such insurer, and
 - notify in writing within ten days, the Superintendent, excess line association, any producing broker and each insured, that coverage should be replaced in the excess line broker's judgment.
20. ELANY issued **Bulletin 2014-07** on March 19, 2014 explaining only premium and other taxable consideration for the insurance policy should be included on a binder or dec. page.
- On March 31, 2014, **ELANY** issued **Bulletin 2014-08** stating that any entity or individual acting as a cover holder, managing general agent, managing general underwriter, or program administrator from a New York office, pursuant to a binding authority agreement entered into with an eligible excess line insurer must be properly licensed as an excess line broker and must file the binding authority agreement with ELANY
21. As of January 1, 2017, ELANY's stamping fee was reduced to 0.17% for policies incepting on or after January 1, 2017.
22. On June 10, 2016 the New York Department of Taxation and Finance issued two Advisory

Opinions (TSB-A16(4)C and TSB-A-16(5)C) that eligible surplus lines insurers are subject to franchise taxes on insurance Companies and those taxes are not limited by NY Tax Law §1505(a)(1). ELANY issued **Bulletin No. 2016-17** noting that these opinions are consistent with previous opinions by this Department.

23. In 2017 the New York State Department of Financial Services (DFS) amended Regulation 41 in order to regulate Transportation Network Company (TNC) group insurance policy coverage. TNCs are ridesharing companies such as Uber and Lyft. Excess line compliance procedures for TNC group insurance policies when New York is the home state of insured are set forth in amendments to Regulation 41, Regulation 35-D and the new TNC Regulation 35-E.

15th Amendment to Regulation 41:

- ☐ A consolidated affidavit Part A and Part C, where applicable, for the group policy must be filed.
- ☐ The total exemption from Regulation 107 (Defense within Limits) and Regulation 121 (Claims Made Policies) for excess line policies is rolled back as these regulations will not apply to excess line coverage for TNC group policies.

7th Amendment to Regulation 35-D

- ☐ The excess line broker shall provide the notice requirement about SUM coverage (supplementary uninsured/underinsured motorists insurance) to the TNC at the time of placement.

Regulation 35-E

- ☐ Before procuring a TNC group insurance policy from an unauthorized insurer, an excess line broker needs to obtain declinations from three (3) authorized insurers **even if the insured meets the definition of an “exempt commercial purchaser.”**
- ☐ TNC group insurance coverage may not be added to the “export list.”
- ☐ The declinations obtained shall be valid for one year and apply to all of the drivers insured under the group policy.
- ☐ The excess line broker shall provide a written affirmation to the TNC of the unavailability of the group coverage from an authorized insurer annually.
- ☐ Prior to procuring a TNC group insurance policy from an unauthorized insurer, an

excess line broker shall obtain a **written commitment** from the unauthorized insurer that the insurer shall:

- (a) cooperate with the superintendent with regard to any inquiry or request for information pertaining to the group policy or any claim submitted thereunder;
- (b) comply with the requirements of Insurance Regulation 64, “Unfair Claims Settlement Practices and Claim Cost Control Measures;”
- (c) use licensed adjusters to investigate or adjust claims submitted under the group policy;
- (d) maintain records in accordance with Insurance Regulation 152, “Standards of Records Retention by Insurance Companies,” and
- (e) maintain the privacy of consumers and customers in accordance with Insurance Regulation 169, “Privacy of Consumer Financial and Health Information.”

24. The Department of Financial Services (DFS) issued final Cybersecurity Requirements for Financial Services companies that took effect on March 1, 2017. The regulation requires each covered entity (including New York surplus lines licensees) to implement an extensive cybersecurity program and designate a Chief Information Security Officer responsible for implementing and reporting the program to the DFS. While the regulation took effect on March 14, 2017, the requirements associated with reporting to the DFS are not due until February 15, 2018.
25. In 2019, the Excess Line Association of New York published its “Compliance Advisor” noting that surplus lines policies are not necessarily exempt from state law, such as personal lines cancellation and nonrenewal standards, standard fire policy provisions, and other laws that apply to policies “issued or delivered” in the state.
26. On January 14, 2021, New York introduced Assembly Bill A2349, which, if passed into law, would establish a group peer-to-peer car sharing regime in New York, which would allow surplus lines insurers to issue group liability and P&C coverage to car sharing programs and the shared vehicles used thereunder.
27. New York Senate Bill S498 and New York Assembly Bill A5241, introduced on January 6, 2021 and February 12, 2021 respectively, would, if passed into law, (1) adjust the required contents of the broker’s affidavit, and (2) eliminate the diligent

effort requirement for certain commercial lines risks when a retail broker places coverage through an unaffiliated licensed excess line wholesale broker.

NORTH CAROLINA

NC

GENERAL INFORMATION:

1. North Carolina **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. North Carolina **does** have a Surplus Lines Association (see Other Comments section #2) as well as a Stamping Office which began processing surplus lines premium taxes effective January 1, 2017. The NC DOI still processes surplus lines premium taxes for Risk Purchasing Groups and Independently Procured insurance.
3. North Carolina **does not** have an Export List.
4. North Carolina **does not** have an industrial insured exemption but has adopted the NRRRA exempt commercial purchaser exemption (§ 58-21-16(b)(1)).
5. **Surplus lines tax:** 5%, payable by broker, plus a 0.4% stamping fee, payable to the NC Surplus Lines Assn.
6. North Carolina has not affiliated with any existing compact (SB 321).
7. North Carolina passed legislation in 2018 to allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

Fees: \$500 (initial filing) and \$1,000 (annual renewal).

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

1. Alien surplus lines insurers are expected to file audited financial statements within six months after their fiscal year end. These financial statements should be reported in United States currency.
2. A surplus lines broker may place insurance with an alien insurer if that insurer is listed on the Quarterly List of Alien Insurers maintained by the NAIC. § 58-21-17.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. If the insurer's annual statement for the most recent December 31 is filed electronically with the NAIC, the NC DOI will no longer require a hard copy of the annual statement to be filed. However, each eligible surplus lines insurer must file a hard copy of its certificate of compliance and verification of deposit from the state of domicile.
2. A surplus lines broker may place insurance with a nonadmitted insurer if:
 - the insurer is authorized to place that type of insurance in its domiciliary jurisdiction; and
 - the insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that is the greater of the minimum capital and surplus requirements under the laws of this state or \$15 million.

The insurance commissioner may waive the minimum capital and surplus requirements for unauthorized foreign insurers if he makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 58-21-20.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

Aviation insurance/wet marine and transportation insurance.

OTHER COMMENTS OR REQUIREMENTS:

1. Eligibility list available at <http://sbs-nc.naic.org/Lion-Web/isp/report/ConsumerSearch.jsp?userid=543560&sec=true>.

2. Contact information for the North Carolina Surplus Lines Association is as follows:
8412 Falls of Neuse, Suite 206
Raleigh, North Carolina 27615
Phone: (919) 746-8415
Website: www.ncsla.com/contact-us/.
Select "Surplus Lines" from the menu on the left, and select "List of Authorized Surplus Lines Companies."
3. North Carolina provides for an affirmative finding of acceptability by the Commissioner based on stated factors pertaining to companies with \$4,500,000 to \$14,999,999 combined capital and surplus.
4. Lloyd's plans or other similar unincorporated groups individual insurers must maintain an irrevocable trust fund of not less than \$50,000,000 as security for all policyholders and creditors in the United States of each member of the Group. This trust fund must be held in a national bank or a member of the Federal Reserve System and must have an expiration date which at no time shall be less than five years in the future.
5. Insurance exchanges created by the laws of individual states must have and constantly maintain total capital and surplus, or the substantial equivalent thereof, of not less than \$50,000,000 in the aggregate. Each individual syndicate must have and constantly maintain total capital and surplus, or the substantial equivalent thereof, of not less than \$3,000,000.
6. Renewal Application and Instructions may be processed through the North Carolina Insurance Department's website by going to www.ncdoi.com and selecting "Industry" at the top of the page.
7. Each eligible surplus lines insurer underwriting service contract reimbursement or contractual liability insurance policies for service agreement companies pursuant to Article 1 of Chapter 58 must file the policies directly with the NC DOI's Property and Casualty Division for approval prior to being used for any purpose in NC in accordance with NAGS 58-1-36.
8. Each eligible surplus lines insurer is expected to notify the NC DOI of all corporate changes within the company, including changes in the United States Attorney-in-Fact for alien insurers.
9. Every evidence of insurance negotiated, placed, or procured by the surplus lines licensee shall bear the name of the licensee and one of the following legends, whichever is applicable, in 12 point type and in contrasting color or in 12 point type and underlined and in bold print:
 - (1) For nonadmitted insurers: **"The insurance company with which this coverage has been placed is not licensed by the State of North Carolina and is not subject to its supervision. In the event of the insolvency of the insurance company, losses under this policy will not be paid by any State insurance guaranty or solvency fund."**
 - (2) For nonadmitted domestic surplus lines insurers: **"The insurance company with which this coverage has been placed is domiciled and authorized by the State of North Carolina and is subject to its supervision. However, in the event of the insolvency of the insurance company, losses under this policy will not be paid by any State insurance guaranty or solvency fund."**
10. On November 18, 2015, the North Carolina legislature also authorized the creation of a North Carolina Stamping Office, making it the 15th Stamping Office in the nation.

NORTH DAKOTA

ND

GENERAL INFORMATION:

1. North Dakota **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. North Dakota **does not** have a Surplus Lines Association.
3. North Dakota **does** have an Export List.
4. North Dakota currently **does** have an industrial insured exemption which will remain in effect (see Appendix C). Additionally, North Dakota has adopted the NRRRA exempt commercial purchaser exemption (26.1-44-01.1(3)).
5. **Surplus lines tax:** 1.75% if the insured's home state is ND. Properties, risks, or exposures located or to be performed in this state or another state. (26.1-44-03.1)
6. North Dakota has repealed **SLIMPACT** (HB 1146).
7. North Dakota **does** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

1. **Power of Attorney, Affidavit and Data Forms.**
2. **Filing or Other Renewal Fee:** \$100 (non-refundable application fee); (power of attorney form required upon approval of application).

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Must be listed on NAIC's Quarterly Listing of Alien Insurers.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. **Evidence of good repute and financial integrity.**
2. **Capital & Surplus:** \$15,000,000.
3. **Annual Statement.**
4. **Report of Examination.**

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

For Exempt Commercial Purchasers: producer is not required to make a due diligence search if proper disclosure made and purchaser makes a written request for procurement.

OTHER COMMENTS OR REQUIREMENTS:

1. North Dakota eligibility list available through "Look up - One Search" at <https://sbs.naic.org/solar-external-lookup/>
Use:
Jurisdiction: North Dakota
Search Type: Company
Company Type: Surplus Lines Insurer
2. A North Dakota surplus lines producer must provide a report and an affidavit that he has performed a diligent search of the admitted market for placing the surplus lines insurance no later than March first, June first, September first, and December first for the preceding quarter's placements.
3. North Dakota allows a North Dakota domestic insurer to be designated a domestic surplus lines insurer if:
 - the insurer possesses policyholders' surplus of at least \$15 million;
 - the designation is in compliance with a resolution of the insurer's Board of Directors; and
 - the commissioner has provided written approval of the designation.Domestic surplus lines insurers are subject to compliance with all financial examination and solvency requirements that apply to domestic insurers regarding examinations and reports.
4. If the insured's home state is North Dakota, the surplus lines producer must give the following consumer notice to every person applying for insurance with a nonadmitted insurer. The notice must be printed in sixteen point type on a separate document affixed to the application. The

applicant must sign and date a copy of the notice to acknowledge receiving it. The surplus lines producer must maintain the signed notice in its file for a period of five years from expiration of the policy. The surplus lines producer must tender a copy of the signed notice to the insured at the time of delivery of each policy the producer transacts with a nonadmitted insurer. The copy must be a separate document affixed to the policy.

“Notice: 1. an insurer that is not licensed in this state is issuing the insurance policy that you have applied to purchase. These companies are called “nonadmitted” or “surplus lines” insurers. 2. The insurer is not subject to the financial solvency regulation and enforcement that applies to licensed insurers in this state. 3. These insurers generally do not participate in insurance guaranty funds created by state law.

These guaranty funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised. 4. Some states maintain lists of approved or eligible surplus lines insurers and surplus lines producers may use only insurers on the lists. Some states issue orders that particular surplus lines insurers cannot be used. 5. For additional information about the above matters and about the insurer, you should ask questions of your insurance producer or surplus lines producer. You may also contact your insurance department consumer help line.”

GENERAL INFORMATION:

1. Ohio **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Ohio **does** have a Surplus Lines Association, the Ohio Association of Professional Specialty Lines (<http://www.oapslo.org>).
3. Ohio **does not** have an Export List.
4. Ohio **does not** have an industrial insured exemption but the NRRA exempt commercial purchaser exemption is in effect. (§ 3905.331).
5. **Surplus lines tax:** 5%, payable by broker.
6. Ohio has not affiliated with any existing compact (HB 122).
7. Ohio enacted legislation in 2019 that **does** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Alien insurers must be on the Quarterly Listing of Alien Insurers maintained by the NAIC § 3905.33(A)(2).

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

A surplus lines broker may not place coverage with a nonadmitted insurer unless, at the time of placement, the nonadmitted insurer:

- is authorized to write such insurance in its domiciliary jurisdiction; and
- possesses capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of Ohio or \$15 million. (§ 3905.33(A)(1)).

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

Ocean marine insurance is exempt from reporting and taxation requirements when placed by a licensed agent.

OTHER COMMENTS OR REQUIREMENTS:

1. Ohio eligibility list is available at <https://ohioinsurance.force.com/community/s/surpluslinecompanies>
2. Commissioner may also require a deposit in the state.
3. Ohio Insurance Department prefers the following language to appear on the Declaration page of surplus lines policies:

THE INSURANCE HEREBY EVIDENCED IS WRITTEN BY AN APPROVED NON-LICENSED INSURER IN THE STATE OF OHIO AND IS NOT COVERED IN CASE OF INSOLVENCY BY THE OHIO INSURANCE GUARANTY ASSOCIATION.

4. The Ohio Insurance Department has an on-line reporting system for payment of the surplus lines tax. Information on this system can be found at <https://insurance.ohio.gov/wps/portal/gov/odi/companies/surplus-lines/resources/gen-info-surplus-agents-brokers>.
5. The link to ORC §3905.33 reflecting the changes in Ohio's Insurance "Code to comply with the NRRA may be found at <http://codes.ohio.gov/orc/3905.33>.
6. During the 2015 legislative session the Ohio legislature removed the requirement that surplus lines affidavits must be notarized. The new "surplus lines statement" (ins 4024) must be retained by the surplus lines broker.

GENERAL INFORMATION:

1. Oklahoma **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Oklahoma **does not** have a Surplus Lines Association.
3. Oklahoma **does not** have an Export List.
4. Oklahoma **does** have an industrial insured exemption applicable to life insurers only (see Appendix C). Oklahoma has also adopted the NRRRA exempt commercial purchaser exemption. (§ 36-1106.1(B)).
5. **Surplus lines tax:** 6%, payable by broker.
6. Oklahoma has not affiliated with any existing compact but commissioner has discretion to enter into a multi-state agreement or compact with the same function or purpose. (§ 36-1106.1(B)).
7. Oklahoma **does** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

1. **Annual Statement/Report:** in U.S. dollars (by August 30 for alien insurers).
2. **Certificate of Approval Filing:** \$150 annually, due upon approval of application.
3. **Fraud Fee** of \$750 (due 7/31) and **Designation of Agent Fee** of \$10, due upon approval.
4. **Certificate of Approval** (Renewal fee): \$650 (\$500 review fee/\$150 certificate of approval fee) (Foreign – March 1; Alien – August 30).
5. **Application Fee:** \$1,000.
6. **Annual Premium Report:** by Oklahoma broker listing risk, premium amount and address of risk due April 1.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

A surplus lines broker may place insurance with an alien insurer if that insurer is listed on the Quarterly List of Alien Insurers maintained by the NAIC. 36-1106(1)(c).

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

A surplus lines broker may place insurance with a foreign insurer if:

- the insurer is licensed in its domiciliary jurisdiction; and
- the insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that is the greater of the minimum capital and surplus requirements under the laws of this state or \$15 million.

The insurance commissioner may waive the minimum capital and surplus requirements for unauthorized foreign insurers if he makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. 36-1106(1)(b). The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. 36-1106(1)(a) and (b).

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

None.

OTHER COMMENTS OR REQUIREMENTS:

1. Oklahoma eligibility list is available at <https://www.oid.ok.gov/regulated-entities/surplus-lines/#1584971868535-95f6ab2f-f0ed>.
2. Insurance contracts procured as surplus lines coverage shall contain in bold-face type notification stamped on the declaration page of the policy that such contracts are not subject to the protection of any guaranty association in the event of liquidation or receivership of the insurer.
3. Insurance may not be procured from unauthorized insurers in Oklahoma unless the interest of the insured cannot be procured from authorized insurers *after direct inquiry to such insurers* by a licensed surplus lines broker.

4. Oklahoma no longer has a bond requirement for non-resident surplus lines brokers.
5. Oklahoma exempts surplus lines brokers from penalty of writing business without a license if they submit an application within 30 days.
6. Oklahoma allows for compulsory auto liability insurance for commercial auto to be issued by surplus lines insurers.

GENERAL INFORMATION:

1. Oregon **does not** maintain an active list of approved surplus lines insurers (see Other Comments section #1).
2. Oregon **does** have a Surplus Lines Association (see Other Comments section #2).
3. Oregon **does not** have an Export List.
4. Oregon **does not** have an industrial insured exemption. Oregon has adopted the NRRA exempt commercial purchaser exemption but has eased some of the requirements (see Appendix C) to qualify as such a purchaser (ORS 735.405(6)).
5. **Surplus lines tax:** 2% payable by broker, and an additional 0.3% fire marshal tax payable by broker (applicable to all surplus lines premiums), plus \$10 flat service charge (applicable for each new or renewal (not endorsement) transaction (see Other Comments section #4 and #5)).
6. Oregon **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

Annual Statement/Report: in U.S. dollars (affidavit of filing with NAIC acceptable for foreign insurers).

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Trust Fund: \$5.4 million; or listed on the NAIC Quarterly List of Alien Insurers as of the date of placement of the policy.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. **Certificate of Good Standing** from domicile state.
2. **Capital and Surplus:** \$15,000,000
3. **Annual Statement instructions:** for a foreign insurer to maintain surplus lines eligibility in Oregon, either a surplus lines licensee or the insurer must file the insurer's annual statement by June 30 each year. There is no annual

statement filing fee. The annual statement can be filed electronically with the NAIC. The insurer also must file a hard copy of the signed jurat page in Oregon as proof of filing. The signed jurat page may be sent to:

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TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

The definition of surplus lines insurance (ORS 731.144) does not mean reinsurance, wet marine and transportation insurance, independently procured insurance, life insurance and health insurance and annuities. Oregon law also exempts insurers writing wet marine and transportation insurance from the requirement to have a certificate of authority. The following risks are exempt from surplus lines tax: 1) Federal government entities; 2) Federal and state chartered credit unions; and 3) Insurance policies purchased by Native American tribes or tribal member covering exposures located on Indian reservation (see Other Comments section #5).

OTHER COMMENTS OR REQUIREMENTS:

1. The Oregon Surplus Lines Association at www.oregonsla.org does maintain a list of eligible surplus lines insurers in Oregon for informational purposes only, not for approval status.

Oregon is a "broker responsible" state and therefore surplus lines eligibility status for both foreign and alien insurers is based on the broker's determination that the insurer is acceptable.

See <http://www.oregonsla.org/resources/insurer-listing>.

- See “Insurer List” tab for a list of nonadmitted insurers who have provided a certified copy of their current annual statements to the state of Oregon as required by ORS 735.415 (1)(c), indicating compliance with the minimum requirements of ORS 735.415(1)(c) as of the date of the statement.
2. Contact information for the Oregon Surplus Lines Association is as follows:
 Roger Helbling
 Surplus Line Association of Oregon
 7360 SW Hunziker Street, Suite 105
 Portland, OR 97223-2305
 Tel.: (503) 718-6700
 Email: Roger@OregonSLA.org.
 3. Each insurance policy or certificate of insurance negotiated, placed or procured by the surplus line licensee must bear the name of the licensee and the following legend in bold type:

“This insurance was procured and developed under the Oregon surplus lines laws. It is NOT covered by the provisions of ORS 734.510 to 734.710 relating to the Oregon Insurance Guaranty Association. If the insurer issuing this insurance becomes insolvent, the Oregon Insurance Guaranty Association has no obligation to pay claims under this insurance.”
 4. The Surplus Line Association of Oregon makes available to any interested party a “tax calculator” which enables interested parties to easily determine the taxes and charges applicable to a proposed transaction. The “tax calculator” may be assessed at the association’s website: www.oregonsla.org.
 5. In 2019, the Oregon legislature passed House Bill 2787, which took effect on January 1, 2020. This bill imposes a tax of 3/4 of 1% or 0.0075 of the gross premium amounts on all non-admitted Wet Marine & Transportation insurance policies that the insurance producer places with unauthorized of non-admitted insurers if the insured’s home state is Oregon.

 The tax applies to policies issued or renewed on or after January 1, 2020. It is the responsibility of the insurance producer to collect, file and pay the tax within 90 days of the effective date of the policy of premium bearing endorsement. The filing and payment of the tax must be done through the Oregon Surplus Line Association – information is on their website at <http://www.oregonsla.org/>.

 The Surplus Line Association has the authority to charge a service charge for each policy or premium bearing endorsement filed. Details related to the service charge is on their website.

 Details relating to the law can be found in the text of the enrolled bill:
<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2787/Enrolled>
 6. Oregon allows surplus lines insurers to provide auto coverage under the financial responsibility provisions.
 7. The OR Insurance Commissioner may accept foreign insurers on a case by case basis who do not meet the minimum capital requirements but in no event may the Commissioner make an affirmative finding of acceptability when the surplus is less than \$4.5 million.

GENERAL INFORMATION:

1. Pennsylvania **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Pennsylvania **does** have a Surplus Lines Association (see Other Comments section #4).
3. Pennsylvania **does** have an Export List (see Other Comments section #7).
4. Pennsylvania **does** have an industrial insured exemption (40 P.S. 46 (e)(6)). Additionally, Pennsylvania has adopted the NRRA exempt commercial purchaser exemption (40 P.S. § 991.1610).
5. **Surplus lines tax:** 3% on gross premiums less any returns, plus a non-refundable, annual stamping fee of \$20 per original filing; subject to additional stamping fees for late or incomplete filings. Neither the additional fee for a late or incomplete filing may be passed on to the insured (Additional stamping fee of \$25 applies to a late filing and additional stamping fee of \$50 applies to a filing with missing producer affidavit).
6. Pennsylvania has not affiliated with any existing compact (SB 1096). Pennsylvania taxes 100% of the premium when Pennsylvania is deemed to be the home state.
7. Pennsylvania **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

The following qualification must be met by those alien companies seeking surplus lines eligibility (See Section 1605 of the Insurance Company Law (40 P.S. Section 991.1605)):

The company is listed on the Quarterly List of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners ("NAIC").

If the company meets the above qualification, the following item should be provided:

A written request for surplus lines eligibility to include documentation evidencing listing by the NAIC.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

The following qualifications must be met by those foreign (U.S.) surplus lines companies seeking surplus lines eligibility (See Section 1605 of the Insurance Company Law (40 P.S. Section 991.1605)):

1. is authorized to write the type of insurance in its domiciliary jurisdiction; and
2. has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which is greater than or equal to \$15,000,000.

The requirement of paragraph 2 may be satisfied by an insurer's possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the Commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability and company record and reputation within the industry. In no event will the Commissioner make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than \$4,500,000.

If the company meets the above qualifications, the following items should be provided:

- a written statement by an officer of the insurer identifying the kinds of insurance coverages the insurer intends to write and the types of risks the insurer intends to insure in Pennsylvania;
- a copy of the certificate of authority of the insurer or similar document setting forth its authority to issue policies and insure risks in the jurisdiction in which the insurer is incorporated, formed or organized; and
- a copy of the jurat page from the latest annual financial report or statement of the insurer signed by the officers of the insurer

and filed with the insurance regulatory authority or other governmental authority in the jurisdiction in which the insurer is incorporated, formed or organized. If this is not sufficient for the PA DOI's purposes, the insurer should be prepared to send the entire financial report upon request.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Wet marine and transportation insurance which includes:
 - insurance upon vessels, crafts or hulls and of interests therein or with relation thereto;
 - insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;
 - insurance of freights cargo and disbursements pertaining to a subject of insurance coming within this definition; and
 - insurance of personal property and interest therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in connection with any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, transshipment or reshipment incident thereto.
2. Reinsurance.
3. Life insurance and annuities.
4. Independently procured insurance.
5. Coverage obtained from risk retention groups under the Risk Retention Amendments of 1986.

OTHER COMMENTS OR REQUIREMENTS:

1. Pennsylvania eligibility list available at https://www.pasla.org/eligible_insurers_overview.htm.
2. Surplus lines insurer must advise state of any pending litigation in the United States involving an insurance department.
3. Sec. 1606 of Pennsylvania surplus lines law allows for the export of a portion not to exceed 25% of a risk to a non-admitted insurer which does not appear on the Department's eligible surplus lines list.
4. Contact information for the Pennsylvania Surplus Lines Association is as follows:
Marie Rudert, Executive Director

Pennsylvania Surplus Lines Association
180 Sheree Boulevard, Suite 3100
Exton, Pennsylvania 19341
Tel.: (610) 594-1340
Fax.: (610) 594-7623
Email: mrudert@pasla.org.

5. Every evidence of insurance negotiated, placed or procured by the surplus lines licensee must bear the name of the licensee and the following legend in 10-point type:

“The insurer which has issued this insurance is not licensed by the Pennsylvania Insurance Department and is subject to limited regulation. This insurance is NOT covered by the Pennsylvania Property and Casualty Insurance Guaranty Association.”
6. Under Bulletin B-2012-9-11, for placements effective 1/1/2013, the producing broker, representing the insured in a given transaction, is no longer required to list on the 1609-PR form the minimum of three licensed carriers who have declined the risk as defined. The laws have not changed, but the affidavit form has been revised. The compliance requirements as stated in Section 1609 of the Pennsylvania Surplus Lines Law as amended July 1, 2011 and Section 124.5 of the Regulations that support the Law continue to require evidence of declinations documented in the producing broker's file in the event of future request.
7. Pennsylvania changed the filing requirement which must be made within 45-calendar days after the placement of an insurance coverage that appears on the state's most recent Export List. The change replaces the old requirement that the surplus lines licensee needed to file with the PA DOI a copy of the declaration page of the policy, cover note, binder or other evidence of insurance delivered by the surplus lines licensee with the word “EXPORT” stamped in red letters in the upper right hand corner. It is now only required to file a written declaration reporting the transaction on a form prescribed by the PA DOI (Form 1604-E). The Export List can be found at:
https://www.pasla.org/efs_kindclass.htm
8. In 2014 Pennsylvania updated 31 PA. Code Ch. 124, implementing changes that will reduce required documentation for foreign insurers to demonstrate eligibility. The Pennsylvania DOI will rely more on information available through the NAIC ISITE system. In addition to their Certificate of Authority, foreign insurers only need to submit their jurat page to the

Pennsylvania DOI. The updated code also clarifies how a producer should document its diligent search effort in the placement of a policy.

GENERAL INFORMATION:

1. Puerto Rico **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Puerto Rico **does not** have a Surplus Lines Association.
3. Puerto Rico **does not** have an Export List.
4. Puerto Rico **does not** have an industrial insured exemption and has not adopted the NRRA exempt commercial purchaser exemption.
5. **Surplus lines tax:** 9%, payable by broker.
6. Puerto Rico adopted NIMA; however, the Board of Directors of NIMA voted on April 28, 2016 to discontinue operations and dissolve the NIMA, Inc. organization. No multistate business, renewal or reinstatement transactions effective on or after October 1, 2016 will be accepted through the Surplus Lines Clearinghouse multistate reporting platform. New, renewal or reinstatement transactions on or after October 1, 2016 with exposure in more than one jurisdiction should be reported directly to the home state's reporting mechanism.
7. Puerto Rico **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

Puerto Rico no longer imposes a fee, financial, premium or other information from foreign and/or alien insurers for surplus lines eligibility purposes, aside from the eligibility requirements set forth in NRRA.

TYPES OF INSURANCE EXEMPTED FROM REQUIREMENT THAT RISK BE PROCURED FROM AN ELIGIBLE SURPLUS LINES INSURER:

Air and ocean marine risks (see Other Comments or Requirements #6).

OTHER COMMENTS OR REQUIREMENTS:

1. Puerto Rico surplus lines insurer's eligibility list is available at http://ocs.gobierno.pr/ocspr/documents/regulacion/Licenciasexp/lineasExcedentes_i.pdf.

2. When a particular risk cannot be insured in whole or in part with an eligible surplus lines insurer, the surplus lines broker may place the risk with an unauthorized insurer if the insurer submits a \$20,000 special deposit with the Secretary of the Treasury of the Commonwealth of Puerto Rico, through the Commissioner.

For such placements the policy must state conspicuously on its face the following recital in red letters: **"All or a number of the insurers participating in this insurance have not been authorized to transact business in Puerto Rico nor approved as surplus line insurers by the Commissioner of Insurance of this Commonwealth. The transaction of this insurance by a licensed surplus line insurance broker shall not be construed to mean that the Commissioner of Insurance of Puerto Rico approves of such insurer."**

3. Surplus lines coverage on medical malpractice business is not limited to be only in excess of authorized coverage, whenever the amount offered by authorized insurers in primary coverage is not enough to apply for excess coverage. In such case, the surplus lines broker may discard the available primary coverage and obtain the entire coverage in the surplus lines market.
4. Surplus lines policies on medical malpractice are exempted from premium taxes.
5. Company seeking eligibility status must have been in business at least 5 years.
6. Air and ocean marine risks subject to surplus lines premium tax provisions.
7. Puerto Rico requires the surplus lines broker to obtain 5 declinations of coverage from admitted insurers before attempting to place the risk in the surplus lines market. These offerings of coverage are made by the broker by completing a form and using the distribution center which has been established by the Puerto Rico DOI for this purpose. However, the surplus lines broker may consider the risk rejected if he does not receive a reply from such insurers within 5 working days from the date on which the distribution center received the form to make the corresponding distribution. (Rule XXVIII Art. 1 and 2)

8. The Office of the Commissioner of Insurance is currently in the process of amending the Puerto Rico Insurance Code provision in compliance with the nationwide uniform requirements set forth by NRRA.
9. In 2018, 26 L.P.R.A. § 1007a-1 amended Puerto Rico's Insurance Code to expressly authorize surplus lines brokers to place "commercial property and contingency" cover with eligible surplus lines insurers. In addition, subject to certain limited requirements, § 1007a-1 authorizes surplus lines placements for an "exempt commercial purchaser" as defined by the NRRA

RHODE ISLAND

RI

GENERAL INFORMATION:

1. Rhode Island **maintains** a list of eligible surplus lines insurers (foreign companies only) (see Other Comments section #1).
2. Rhode Island **does not** have a Surplus Lines Association.
3. Rhode Island **does not** have an Export List.
4. Rhode Island **does** have an industrial insured exemption applicable to captive insurers only which will remain in effect. Rhode Island has also incorporated the NRRRA exempt commercial purchaser exemption as per Bulletin 2011-6.
5. **Surplus lines tax:** 4%, payable by broker.
6. Rhode Island has adopted **SLIMPACT** (HB 5110).
7. Rhode Island **does not** allow domestic surplus lines insurers in the state.

(Note: Rhode Island has also extended the 2% tax on insurance gross premiums to the Medical Malpractice Joint Underwriters Association).

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

Annual Premium Report: by July 31 (required by Rhode Island Division of Taxation. Reports and Questions should be addressed to Division of Taxation).

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

A broker may place business with an alien insurer if the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC. (Per Insurance Division Guidance, issued 9/28/2011)

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

A surplus lines broker may place insurance with a foreign insurer if:

- the insurer has established satisfactory evidence of good repute and financial integrity; and

- the insurer is authorized to place that type of insurance in its domiciliary jurisdiction; and
- the insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that is the greater of the minimum capital and surplus requirements under the laws of this state or \$15 million.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Policies issued outside Rhode Island involving insurance on vessels, crafts, or hulls, cargoes, marine protection and indemnity or other risks including strikes and war risks commonly insured under ocean marine or wet marine forms.
2. Out-of-state risks.
3. Industrial Insurance which is defined as an insured:
 - which procures the insurance of any risk by the use of the services of a full time employee acting as insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant;
 - whose aggregate annual premiums on all risks excluding workers' compensation and group total at least twenty-five thousand dollars (\$25,000); and
 - which has at least twenty-five (25) full time employees.

OTHER COMMENTS OR REQUIREMENTS:

1. Rhode Island eligibility list available at <https://dbr.ri.gov/divisions/insurance/licensed.php>.
2. Rhode Island exempts an insured and surplus lines brokers from the requirement of filing an affidavit when obtaining surplus lines insurance for certain insurable interests. The exempted risks include: amusement parks and devices, environmental improvement and/or remediation sites, vacant property or property under renovation, demolition operations, event cancellation due to weather, railroad liability, discontinued products, fireworks and pyrotechnics, warehouseman's legal liability,

- excess property coverage and contingent liability.
3. Regulations were promulgated in 2009 to eliminate the filing of a surplus lines affidavit with RIDOI. The affidavit must still be completed and is subject to audit by the RIDOI, but filing with the RIDOI is no longer required.
 4. Insurance Regulation 11, governing surplus lines brokers, was amended to: 1) allow a non-resident surplus lines broker to apply for a non-resident surplus lines broker's license without first obtaining a resident property and casualty insurance producer's license; 2) increase the tax from 3% to 4% on gross premiums for policies effective on or after July 1, 2011; 3) maintain the 3% tax on gross premiums for policies effective prior to July 1, 2010; and 4) require brokers to include written notice in applications and policies about the unavailability of benefits under Rhode Island's Insurers Insolvency Fund.
 5. Every application form for insurance from a surplus lines insurer, every affidavit form executed by the insured, and every policy (on its front and declaration pages) issued by the surplus lines insurer, shall contain in ten (10) point type the following notice:

“NOTICE

THIS INSURANCE CONTRACT HAS BEEN PLACED WITH AN INSURER NOT LICENSED TO DO BUSINESS IN THE STATE OF RHODE ISLAND BUT APPROVED AS A SURPLUS LINES INSURER. THE INSURER IS NOT A MEMBER OF THE RHODE ISLAND INSURERS INSOLVENCY FUND. SHOULD THE INSURER BECOME INSOLVENT, THE PROTECTION AND BENEFITS OF THE RHODE ISLAND INSURERS INSOLVENCY FUND ARE NOT AVAILABLE.”

SOUTH CAROLINA

SC

GENERAL INFORMATION:

1. South Carolina **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. South Carolina **does not** have a Surplus Lines Association.
3. South Carolina **does not** have an Export List.
4. South Carolina **does** have an industrial insured exemption (see Appendix C) which will remain in effect. As of 7/21/2011, the NRRA exempt commercial purchaser exemption is also effective.
5. **Surplus lines tax:** 6%, payable by broker (see Other Comments section #3).
6. South Carolina has not become affiliated with any tax sharing agreement but collects 100% of the surplus lines premium tax when it is the home state.
7. South Carolina **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Applicant must submit the following:

1. It must be listed with the National Association of Insurance Commissioners International Insurers Department (IID). Once approved to be added to the Department's list of Alien Eligible Surplus Lines Insurers, it must remain on the IID List. Should the Department receive notification from the IID that the Applicant has been removed from its list, it will immediately be removed from this Department's list of Alien Eligible Surplus Lines Insurers.
2. A description of the business to be written in South Carolina and the names of the surplus lines brokers that it intends to have place the business.
3. Completed Form 1000 and Form 1027.

Once the above information is received and deemed acceptable, the South Carolina Certificate of Approval will be mailed to the Applicant.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. A properly executed annual statement as filed with the insurance department of the Applicant's home state and certified to that effect showing a minimum of \$15 million in capital and surplus. A quarterly statement should also be included in an application submitted more than one month and fifteen days after the end of the most recent quarter. If the most recent annual and quarterly statements are filed with the NAIC, then these items are not required to be submitted.
2. A current Certificate of Compliance/Authority from the insurance department of its home state which shows the lines of business that it is authorized to write in its home state.
3. A description of the business to be written in South Carolina and the names of the surplus lines brokers that it intends to have place the business.
4. Completed Form 1000 and Form 1027.

Once the above information is received and deemed acceptable, the South Carolina Certificate of Approval will be mailed to the Applicant.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

Wet marine and transportation insurance, insurance independently procured, and life and health insurance and annuities. See S.C. Code Ann. Section 38-1-20(56).

OTHER COMMENTS OR REQUIREMENTS:

1. South Carolina's list of eligible surplus lines insurers is available under General Information at <http://doi.sc.gov/581/Company-Information>.
2. A foreign or alien eligible surplus lines insurer is not permitted to write any class of business in South Carolina for which it is not authorized by its charter.

3. The 6% premium tax rate is comprised of a 4% state broker's premium tax and a 2% municipal broker's premium tax. Payments are not required to be made online. Users have the option of submitting a paper check. For all surplus lines medical malpractice policies written or renewed after January 1, 2020, the broker must charge a 6% assessment to the insured, in addition to the premium tax.
4. Surplus lines policies in South Carolina must contain the following disclosure statement. See S.C. Code Ann. Section 38-45-110 (2002):

“This company has been approved by the director or his designee of the South Carolina Department of Insurance to write business in this State as an eligible surplus lines insurer, but it is not afforded guaranty fund protection.”

5. The South Carolina Legislature enacted legislation in 2018 allowing for “international major medical insurance” to be written on a non-admitted basis.

GENERAL INFORMATION:

1. South Dakota **does not maintain** a list of eligible surplus lines insurers.
2. South Dakota **does not** have a Surplus Lines Association.
3. South Dakota **does not** have an Export List.
4. South Dakota **does not** have an industrial insured exemption but does recognize a commercial purchaser exemption. South Dakota has not yet updated its exempt commercial purchaser exemption to match that of the NIRA (see Appendix C).
5. **Surplus lines tax:** 2.5% (3% for fire insurance), payable by broker, or individual (if self-procured).
6. South Dakota adopted **NIRA** (HB 1030); however, the Board of Directors of NIRA voted on April 28, 2016 to discontinue operations and dissolve the NIRA, Inc. organization. The SLAS Clearinghouse will continue to accept surplus lines filings and payments for South Dakota policies effective October 1, 2016 and after. Beginning October 1, 2016, all new and renewal multistate policies for South Dakota will be reported as single state policies through the SLAS Clearinghouse single state reporting platform in SLIP, with 100% of the premium being reported to and taxed by the respective home state.
7. South Dakota **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

SD requirements for a surplus lines insurer remain the same as before aside from the requirements under NIRA. Surplus lines insurers will be required to file the Surplus Lines Insurer Business Written & Premium Tax Report along with the Schedule T & State Page for Foreign companies. Alien surplus lines companies will be required to file the Surplus Lines Insurer Business Written & Premium Tax Report.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

1. **Premium report** (see above).
2. **NAIC Listing.**

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Ocean marine and foreign trade insurance.
2. Insurance on subjects located, resident, or to be performed wholly outside of South Dakota or on vehicles or aircraft owned and principally garaged outside of South Dakota.
3. Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.
4. Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of the aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of the aircraft.

OTHER COMMENTS OR REQUIREMENTS:

1. Burden is on broker to satisfy himself that company is financially solvent and has requisite trust fund. If alien insurer does not have trust fund then application for eligibility must be made to Director of Insurance.
2. South Dakota insurance business written by a non-admitted company **must** be placed through a:
 - resident or non-resident producer, licensed as a Surplus Lines Broker; or
 - Surplus Lines Broker for risk retention groups or risk purchasing group - Restricted License.
3. A Surplus Lines Broker license may be issued to a Non-Resident agent, in good standing in his state, doing business pursuant to the Federal Risk Retention Act of 1986. The surplus lines broker authority in this instance is limited to the solicitation of commercial liability to only purchasing group or risk retention group members located in South Dakota.

4. A 2.5% tax on self-procured insurance is payable by the insured. The responsibility to inform such insured of his duty to remit the premium tax is placed upon the underwriting insurer, due to his status as the sophisticated party in the insurance transaction.
5. South Dakota permits a uniform report to be filed in lieu of an annual statement or affidavit as to exported insurance. The uniform report must contain information sufficient to determine the amount and type of surplus lines insurance written in the state and sufficient to determine the appropriate amount of tax to be paid.
6. The South Dakota DOI issued a Bulletin in 2013 requiring all single-state surplus lines policies issued or renewed after January 1, 2013 and any subsequent endorsements to those policies, to be filed through the SLAS Clearinghouse. Policies with effective dates or endorsements before that date will continue to be filed with the South Dakota Insurance Department until renewal.
7. Life and health insurance, workers compensation, annuities and reinsurance cannot be written in the surplus lines market, except this prohibition does not apply to the procurement of disability insurance that has a benefit limit in excess of any benefit available from an admitted insurer. (SDCL 58-32-4)
8. Every insurance contract procured and delivered as a surplus lines coverage must be initialed by or bear the name of the surplus lines broker who procured it and have stamped upon it, in ten point or larger, boldface type, the following:

“THIS INSURANCE CONTRACT IS ISSUED BY A NON-ADMITTED INSURER WHICH IS NOT LICENSED BY NOR UNDER THE JURISDICTION OF THE SOUTH DAKOTA INSURANCE DIRECTOR.”
9. The South Dakota DOI issued Bulletin 13-04 in 2014, which provides guidance on rebating, fees and commissions. Rebating, negotiating commissions with consumers, charging fees not specified in the insurance product and collecting consulting fees and commissions on the same product are specifically prohibited, including for surplus lines brokers.

GENERAL INFORMATION:

1. Tennessee **does** maintain a list of foreign eligible surplus lines insurers (see Other Comments section #1).
2. Tennessee **does not** have a Surplus Lines Association.
3. Tennessee **does not** have an Export List.
4. Tennessee **does** have an industrial insured exemption (see Appendix C) and has also implemented the NRRRA exempt commercial purchaser exemption (§56-14-102(8)).
5. **Surplus lines tax:** 5%.
6. Tennessee **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Alien surplus lines insurers are ineligible in Tennessee unless listed by the NAIC International Insurers Department.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. **Annual Statement/Report** (late or incomplete filings subject to a penalty of \$100 per day).
2. **Filing or Other Renewal Fees:** \$675 application fee; \$440 upon licensure – letter of notification of eligibility; \$515 annual statement (foreign) and \$270 – annual review fee.
3. **Capital and Surplus Minimum:** \$15,000,000 except where commissioner makes an affirmative decision.
4. **Certificate of Compliance Evidencing Authorization** issued by domiciliary state.

TYPES OF INSURANCE EXEMPTED FROM AUTHORIZED INSURER REGULATION:

1. Transactions in Tennessee involving policies lawfully solicited, written and delivered outside of Tennessee covering only subjects of insurance not resident, located or expressly to be performed in Tennessee at the time of issuance or covering property in the course of transportation by land, air or water, to, from or

through Tennessee and including any preparation or storage incidental thereto, and which transactions are subsequent to the issuance of such policies.

2. Contracts of insurance issued to an industrial insured or directly procured by citizens of this state.
3. Agents/Industrial Insureds/direct procurement are liable for premium and/or surplus lines tax for 1 and 2 above.

OTHER COMMENTS OR REQUIREMENTS:

1. The eligibility list is located at: <https://www.tn.gov/commerce/insurance/types-of-insurance-companies/surplus-lines.html>.
2. A \$15 fee is imposed for serving process on the Commissioner of Insurance in his capacity as agent of record for an insurance company.
3. Broker must also have a non-resident P&C license in Tennessee and pay a \$120 fee.
4. The following kinds of insurance are not eligible for surplus lines placements in Tennessee:
 - Primary personal auto;
 - Surety; and
 - Workers' compensation, except for excess workers' compensation.
5. The continuing eligibility review information for foreign surplus lines companies is also available at the following website: <https://www.tn.gov/commerce/insurance/types-of-insurance-companies/surplus-lines.html>
6. Every new or renewed insurance contract certificate, cover note or other confirmation of insurance procured and delivered as a surplus lines coverage must bear the name and address of the writing agent and shall have stamped, affixed or printed upon it the following:

“This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a surplus line coverage pursuant to the Tennessee insurance statutes.”

Such document must show the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and premium

taxes to be collected from the insured, and the name and address of the insured and insurer. If the direct risk is assumed by more than 1 insurer, the document must state the name and address and proportion of the entire direct risk assumed by each insurer.

7. Under Interpretive Opinion No. 05-15, "group surplus lines certificates of insurance issued to citizens of the State of Tennessee are considered insurance policies in this state and are subject to Tennessee's gross premium taxation payment requirements."

GENERAL INFORMATION:

1. Texas **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Texas **does** have a Surplus Lines Association and a Stamping Office (see Other Comments section #8).
3. Texas **does not** have an Export List.
4. Texas **does** have an industrial insured exemption but adopted legislation in 2013 which aligns the Exempt Commercial Purchaser definition of the NRRA.
5. **Surplus lines tax:** 4.85% (+ stamping fee of .075% (.00075)) (reduced from .15%, effective January 1, 2021), payable by broker (TX DOI imposes assessments/enforcement actions for late filings).
6. Texas has not affiliated with any existing compact but has adopted legislation allowing it to keep 100% of surplus line premium tax where Texas is the home state (SB 1, Article 18).
7. Texas **does** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

1. The provisions of the NRRA are effective July 21, 2011.
2. The placement of nonadmitted insurance is solely subject to the statutory and regulatory requirements of the insured's home state.
3. Nonadmitted insurance includes both surplus lines and independently procured insurance but does not include unauthorized insurance transactions by a non-licensed insurer that may be subject to regulatory actions and taxation by a state.
4. New and renewal policies and any modifications made with an effective date prior to July 21, 2011, remain subject to the laws and regulations of each state as of the policy effective date.
5. New and renewal policies and any modifications made with an effective date on or after July 21, 2011, are only subject to the laws and regulations of the home state of the insured.
6. The NRRA provisions should be applied to multi-year and continuous-until-cancelled

policies on the policy's first anniversary date on or after July 21, 2011.

7. Only the home state of an insured can require premium tax on a multi-state policy; however, states may join an agreement or compact to allocate the taxes among the various states afforded coverage under the policy.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY): (FOR ALIEN INSURERS NOT ON NAIC QUARTERLY LIST BUT GRANDFATHERED UNDER NEW LAW EFFECTIVE 6/14/13)

1. **Annual Report:** expressed in US Dollars.
2. **Certificate of Authority:** must be certified and indicate the kind and classes of business the company is entitled to write.
3. **List of Texas Surplus Lines Agents.**
4. **Three Year Business Plan:** using Form FIN 424.
5. **Biographical Affidavits:** (current within 3 years) for each officer, director and management of the insurer.
6. **Trust Agreement and Current Statement of Account.**
7. **Premium Report.**
8. **Actuarial Opinion:** due August 1.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. **Certificate of Authority or License:** certified copy from insurer's state of domicile.
2. **Financial Statements:** the Texas DOI may review statements filed with the NAIC and in accordance with NAIC's guidelines.
3. **Lines of Business:** anticipated to be written in Texas.

ADDITIONAL GUIDELINES:

1. Texas Insurance Code, Chapter 229, gives the Comptroller the authority to join in a tax compact or other agreement. If the Comptroller decides to join in such an agreement, the industry will be notified in order to prepare for any necessary reporting and filing changes.

2. The NRRA does not preempt any state law, rule or regulation that applies to the placement of workers' compensation or excess insurance for self-funded workers' compensation plans.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

None. (see Other Comments section #3 below).

OTHER COMMENTS OR REQUIREMENTS:

1. Texas eligibility search available at <https://www.tdi.texas.gov/insurer/surpluslines.html> or at Surplus Lines Service Office of Texas: <https://www.sltx.org/insurers/eligible-insurer-list/eligible-insurers/>
2. Onus is on broker to ascertain financial stability of insurer.
3. Texas Insurance Code (Chapter 225) provides tax exemption for premiums on risks or exposures which are properly allocated to federal waters, international waters or under jurisdiction of a foreign government. Risks located in Texas waters are taxable under state law. Tax exemption does not pre-empt the reporting of the surplus lines policy to the Surplus Lines Stamping Office of Texas, unless 100% of the exposure is tax-exempt or located in other state(s).
4. If a non-resident broker license is being sought by a corporation or partnership, at least one officer or director must also obtain an individual surplus lines license to receive the corporate license for the agency or partnership. If there are any other officers, directors, partners or employees in the agency that will be doing the acts of a surplus lines agent, they will be required to have an individual surplus lines license as well. Applicant must also have either an underlying General Lines P&C Agent license or an MGA license in Texas. SB697 adopted in the 83rd Legislative session does not require an underlying license for certain non-resident surplus lines agents who meet specific criteria outlined in Texas Insurance Code section 981.203(a-1).
5. All insurance companies, including surplus lines insurers, are required to promptly refund to the insured any unearned premium for a policy.
6. Rates charged by all insurers, including surplus lines insurers, must be "just, fair, reasonable, adequate, not confiscatory and not excessive for the risks to which they apply, and not unfairly discriminatory."

7. Texas no longer requires a surety bond or other proof of financial responsibility for licensure of surplus lines agents.
8. Texas Surplus Lines Association
Website: www.tsla.org.
Contact: Jean Patterson, Executive Director
Texas Stamping Office
Website: <https://www.sltx.org/>
Contact: (TBD), Executive Director.
9. In 2009, Texas created an unauthorized insurance guaranty fund to help pay the claims of unauthorized insurers. Funds will be derived from fines and penalties imposed on unlicensed insurance entities and licensed entities that are doing insurance business in Texas without a license.
10. The Texas legislature enacted legislation in 2011 which made significant reforms to the operation of the Texas Windstorm Insurance Association. It affects surplus lines insurers in that it redefines the types of policies subject to premium allocation reporting and potential surcharging for the funding of Class 2 public securities. It specifies that only fire and allied lines, farm and ranch owners, residential property, private passenger automobile liability and physical damage, commercial automobile liability and physical damage, and the property portion of commercial multi-peril insurance policies are subject to surcharging.
11. The Texas Legislature enacted Legislation in 2013 which aligns state law to the NRRA requirements.
12. A policy issued by an eligible surplus lines insurer or a certificate of insurance issued by the surplus lines agent must contain a provision stating and designating the Person to whom the commissioner is to mail process. The plaintiff must supply this address in any citation served under this section.

A surplus lines document issued by an eligible surplus lines insurer must state, in 11-point type, the following:

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as surplus line coverage under the Texas insurance statutes. The Texas Department of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and the insurer is not a member of the property and casualty insurance guaranty association created

under Chapter 462, Insurance Code. Chapter 225, Insurance Code, requires payment of a (insert appropriate tax rate) percent tax on gross premium.

A surplus lines document issued by a domestic surplus lines insurer must state in, in 11-point type, the following:

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.

A surplus lines document must show:

- the description and location of the subject of the insurance;
 - the coverage, conditions, and term of the insurance;
 - the premium and rate charged, and premium taxes to be collected from the insured;
 - the name and address of:
 - the insured;
 - the insurer; and
 - the insurance agent who obtained the surplus line coverage; and
 - if the direct risk is assumed by more than one insurer:
 - the name and address of each insurer; and
 - the proportion of the entire direct risk assumed by each insurer.
13. Texas enacted Legislation in 2017 which exempts from diligent effort requirements any industrial insureds that employ qualified risk managers, have aggregate nationwide commercial insurance premiums of \$25,000 in the previous year and have 25 full-time employees.
14. In 2018, the Texas Department of Insurance (“TDI”) repealed and replaced Chapter 15 of the Texas Administrative Code (“the Code”). The repeal of existing Chapter 15 and the adoption of new Chapter 15 were necessary to implement legislation that amended Insurance Code Chapter 981, concerning surplus lines insurance.

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 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.

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.

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 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 stamping office's plan of operation.

15. Texas enacted legislation in 2019 eliminating the diligent search requirement for exporting flood insurance to the surplus lines market.

GENERAL INFORMATION:

1. Utah **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Utah **does** have a Surplus Lines Association (see Other Comments section #4).
3. Utah **does** have an Export List (see Other Comments section #1).
4. Utah **does** have an industrial insured exemption applicable for captive insurers only (see Appendix C). Utah does not have any statutory exempt commercial purchaser provisions but does recognize the NRRA exempt purchaser exemption as of 7/21/2011.
5. **Surplus lines tax:** 4.25% (the insurer, all brokers involved in the transaction, and the policyholder are jointly and severally liable for payment) plus stamping fee of 0.18% (increased from 0.15% effective 1/1/2018). Note, stamping office fee of 0.18%.
6. Utah adopted **NIMA** (HB 316); however, the Board of Directors of NIMA voted on April 28, 2016 to discontinue operations and dissolve the NIMA, Inc. organization. No multistate business, renewal or reinstatement transactions effective on or after October 1, 2016 will be accepted through the Surplus Lines Clearinghouse multistate reporting platform. New, renewal or reinstatement transactions on or after October 1, 2016 with exposure in more than one jurisdiction should be reported directly to the home state's reporting mechanism.
7. Utah **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

1. **Renewal fee:** \$575 due March 1 with invoice.
2. Utah does not incorporate any NRRA insurer eligibility provisions, but current law requires unauthorized insurer to be "in substantial compliance with the solvency standards in Chapter 17, Part 6, Risk-Based Capital, or maintain capital and surplus of at least \$15,000,000, whichever is greater." §31A-15-103(6)(e). Therefore, under the NRRA, the

NRRA eligibility standards apply in Utah as of July 21, 2011.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

As of July 21, 2011, Utah cannot prohibit placement of surplus lines insurance with a nonadmitted insurer domiciled outside the U.S. if the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

A broker may place insurance with a nonadmitted insurer domiciled in a U.S. jurisdiction if:

- the insurer is authorized to write the type of insurance in its domiciliary jurisdiction; and
- the insurer has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:
 - The minimum capital and surplus requirements under the law of Utah; or
 - \$15,000,000

The insurance commissioner may waive the minimum capital and surplus requirements above if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million.

OTHER COMMENTS OR REQUIREMENTS:

1. Utah eligibility and export lists available at Eligible Surplus Lines Insurers:
<https://www.slaut.org/insurers-list>

Export List:

<https://insurance.utah.gov/licensee/insurers/excess-surplus-lines/export-list>

2. For alien insurers to retain eligibility, the company need only continue its NAIC listing.
3. Applicant may be required to submit quarterly statements, changes in directors and officers, and updated accounting or financial information during the pendency of the application.
4. Utah Surplus Lines Association
Contact: Sylvia Bruno
Phone: 801-944-0114
Email: sbruno@slaut.org
5. A policy issued must include a description of the subject of the insurance and indicate the coverage, conditions, and term of the insurance, the premium charged and premium taxes to be collected from the policyholder, and the name and address of the policyholder and insurer. If the direct risk is assumed by more than one

insurer, the policy must state the names and addresses of all insurers and the portion of the entire direct risk each has assumed. All policies issued under the authority of this section must have attached or affixed to the policy the following statement: **“The insurer issuing this policy does not hold a certificate of authority to do business in this state and thus is not fully subject to regulation by the Utah insurance commissioner. This policy receives no protection from any of the guaranty associations created under Title 31A, Chapter 28.”**

GENERAL INFORMATION:

1. Vermont **does not** maintain a list of eligible surplus lines insurers.
2. Vermont **does not** have a Surplus Lines Association.
3. Vermont **does not have** an Export List.
4. Vermont **does** have an industrial insured exemption (see Appendix C) which will remain in effect. Vermont's new statute is silent on the definition of exempt commercial purchasers but the NRRA exempt commercial purchaser exemption is recognized in Vermont unless or until SLIMPACT adopts rules.
5. **Surplus lines tax:** 3%, paid quarterly by broker.
6. Vermont enacted legislation (effective July 1, 2019) repealing **SLIMPACT** (S 131).
7. On June 10, 2019, Vermont enacted legislation (effective July 1, 2019) that **does** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

NRRA restricts the eligibility requirements a state may impose on nonadmitted insurers. See 15 U.S.C. § 8204. For nonadmitted insurers domiciled in a U.S. jurisdiction, broker is permitted to place nonadmitted insurance with such insurers provided they are authorized to write such business in their state of domicile and maintain minimum capital and surplus of \$15 million.

For nonadmitted insurers domiciled outside the U.S., a broker may place business with such insurers provided the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Insurance on property or operations of aircraft or railroads engaged in transportation in interstate and foreign commerce.

2. Insurance on vessels, crafts, or hulls, cargoes, marine builder's risks, marine protection and indemnity or other risks including strikes and war risks commonly insured under ocean or wet marine forms of policy.
3. Transactions involving wet marine and transportation insurance covering property in the course of transportation by land, air, or water, to, from or through Vermont and including any preparation or storage incidental thereto.
4. Industrial Insurance.

OTHER COMMENTS OR REQUIREMENTS:

1. Vermont Insurance Department Bulletin 134 (November 8, 2001) clarifies the Department's policy on whether surplus lines liability carriers must provide coverage for punitive as well as compensatory damages. The Department allows surplus lines carriers to exclude punitive damages from surplus lines policies because that encourages the development of the surplus lines insurance market and the coverage of risks that would not otherwise be covered.
2. Each surplus lines broker through whom a surplus lines insurance coverage is procured shall endorse on the outside of the policy and on any confirmation of the insurance, his or her name, address and license number, and the name and address of the producer, if any, through whom the business originated. Where such coverage is placed with an eligible surplus lines insurer there shall be stamped or written conspicuously in no smaller than 10 point boldface type of a contrasting color upon the first page of the policy and the confirmation of insurance if any, **"The company issuing this policy has not been licensed by the state of Vermont and the rates charged have not been approved by the commissioner of insurance. Any default on the part of the insurer is not covered by the Vermont Insurance Guaranty Association."**

GENERAL INFORMATION:

1. The U.S. Virgin Islands **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. The U.S. Virgin Islands **does not** have a Surplus Lines Association.
3. The U.S. Virgin Islands **does not** have an Export List.
4. USVA **does not** have an industrial insured exemption but does recognize the NRRA exempt commercial purchaser exemption as of 7/21/2011, although it is not yet codified.
5. **Surplus lines tax:** 5% of quarterly gross premiums less returns, payable by licensed surplus lines broker on or before the first day of February, May, August and November of each year.
6. The U.S. Virgin Islands **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

1. **Premium report.**
2. **Annual renewal fee:** \$350
3. **Annual report.**
4. **Certificate of Authority:** current

Note: The NRRA restricts the eligibility requirements a state may impose on nonadmitted insurers. For nonadmitted insurers domiciled in a U.S. jurisdiction, a broker is permitted to place nonadmitted insurance with such insurers provided they are authorized to write such business in their state of domicile and maintain minimum capital and surplus of \$15 million.

For nonadmitted insurers domiciled outside the U.S., a broker may place business with such insurers provided the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Ocean marine and foreign trade insurance.

2. Insurance on subjects located, resident, or to be performed wholly outside of the U.S. Virgin Islands, or on vehicles or aircraft owned and principally garaged outside of the U.S. Virgin Islands.
3. Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of the aircraft, or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of the aircraft.

OTHER COMMENTS OR REQUIREMENTS:

1. U.S. Virgin Islands eligibility list available at cheryl.charleswell@lgo.vi.gov.
2. Agents or brokers placing exempted coverages above are required to maintain a full and true record, for not less than five years, of each such coverage as required for surplus lines insurance. The record must be kept available in the U.S. Virgin Islands for the examination of the Commissioner of Insurance.
3. Surplus lines brokers must file a quarterly statement with the Commissioner on or before the first day of February, May, August, and November of each year.
4. Although certain types of insurance are exempted from surplus lines regulation, the taxes (5%) on the premiums collected on the portion of risks located in the U.S. Virgin Islands must be remitted to the Commissioner of Insurance.
5. Within thirty (30) days after the procuring of any surplus lines insurance, the surplus lines broker must execute and shall file with the Commissioner a written report, which shall include: the name and address of the insured; the identity of the insurer or insurers; a description of the subject and location of the risk; the amount of premium charged for the insurance; and such other pertinent information as the Commissioner may reasonably require.
6. In November of 2020, the U.S. Virgin Islands' Division of Banking, Insurance and Financial Regulation issued ORDER NO. 11/2020 listing various anticipated amendments to the surplus lines laws, including: (1) adjusting the diligent

search requirements in connection with certain insurance coverages; (2) changing the required wording of the surplus lines policy stamp; (3) requiring that all surplus lines premium tax be deposited in the U.S. Virgin Islands Insurance Guaranty Fund (even though losses in the event of a surplus lines insurer's insolvency are not covered by the Guaranty Fund); (4) mandating that surplus lines insurers submit annual premium reports; and (5) amending certain surplus lines related definitions. These anticipated amendments, which have not yet been adopted by the legislature and passed into law, can be found at:

<https://ltg.gov.vi/departments/banking-insurance-and-financial-regulation/#1549548042314-869bbdfb-c612>

GENERAL INFORMATION:

1. Virginia **maintains** a list of eligible foreign surplus lines insurers (see Other Comments section #1).
2. Virginia **does** have a Surplus Lines Association (see Other Comments section #7).
3. Virginia **does not** have an Export List.
4. Virginia **does** have an industrial insured exemption (see Appendix C) that will remain in effect. As of 7/21/2011, the NRRA exempt commercial purchaser exemption is also effective, although it is not yet codified.
5. **Surplus lines tax:** 2.25%, (except workers' compensation) payable by broker.
6. Virginia has not affiliated with any existing compact (HB 2286) Effective: July 1, 2011. Virginia requires every licensed surplus lines broker or person required to be licensed as a surplus lines broker to pay the Insurance Premiums License Tax on each policy of insurance procured by him during the preceding calendar year with an insurer not licensed to transact insurance business in Virginia. For policies effective on or after July 1, 2011, such payments are based on the direct gross premium income derived from policies for insureds whose home state is Virginia. See Va. Code §38.2-4809 for more information.
7. Virginia passed legislation in 2018 that allows domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

An alien insurer is deemed approved by the Commission if such insurer is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC. (§ 38.2-4811D).

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. Annual Statement/Quarterly Statement: due no later than March 1 (unless the insurer's state of domicile has established a later filing date) and/or one month and fifteen days after the end of the latest quarter showing a minimum of \$15

million in capital and surplus. If filed with the NAIC, then a hard copy is not required.

2. Certificate of Compliance.
3. Virginia Plan of Operation (for initial application). Description of specific plan of operation in Virginia, including a list of surplus lines brokers.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Insurance on vessels or crafts, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies, as distinguished from inland marine insurance policies. However, other provisions of Title 38.2 of the Code of Virginia may apply.
2. Insurance of the rolling stock and operating properties of railroads used in interstate commerce or of any liability or other risks incidental to the ownership, maintenance or operation of such railroads. However, other provisions of Title 38.2 of the Code of Virginia may apply.
3. Industrial Insurance.

OTHER COMMENTS OR REQUIREMENTS:

1. Current list of foreign approved insurers available at Virginia Insurance Department's website at <http://www.scc.virginia.gov/boi/> (follow procedures for the list of surplus lines carriers; click on "Consumer Home"; select "Company Lookup," select "Company", select "Surplus Lines Carrier." A complete list of foreign surplus lines carriers approved in Virginia is listed.
2. Exempted classes of insurance subject to premium taxes must be placed by a Virginia licensed surplus lines broker.
3. Broker must have a surplus lines broker license in home state and complete an application.
4. Virginia allows a surplus lines carrier to sell ultralight aircraft insurance as defined by the Federal Aviation Administration. Ultralight aircraft owners are required by state financial responsibility laws to either carry a \$100,000

insurance policy or deposit \$50,000 with the State Treasury.

5. A notice in a form prescribed by the Commission must be given to the insured by the surplus lines broker procuring the policy or by any duly licensed property and casualty insurance agent placing surplus lines business with the surplus lines broker. The notice must contain, but not be limited to, statements that the policy is being procured from or has been placed with an insurer approved by the Commission for issuance of surplus lines insurance in this Commonwealth, but not licensed or regulated by the Commission and that there is no protection under the Virginia Property and Casualty Insurance Guaranty Association against financial loss to claimants or policyholders because of the insolvency of an unlicensed insurer. The notice must also set forth the name, license number and mailing address of the broker. The notice must be given prior to placement of the insurance. In the event coverage must be placed and become effective within twenty-four hours after referral of the business to the surplus lines broker, the notice may be given promptly following such a placement. In addition, a copy of the notice must be affixed to the policy.
6. As per Administrative Letter 2008-06, surplus lines insurers, risk retention groups not chartered in Virginia, and licensed insurers transacting the business of insurance with risk purchasing groups not domiciled in Virginia are only required to use Virginia automobile standard forms if the insurer, on behalf of its insured, files an SR-22 or FR-44 with the Virginia Department of Motor Vehicles in order to comply with Virginia's financial responsibility laws. Consequently the Bureau of Insurance has withdrawn Administrative Letter 1995-4, which required surplus lines insurers to use the automobile standard forms without exception.

However, the following entities must always use Virginia automobile standard forms, and any additional provisions or coverages more favorable than those in the automobile standard forms used by these entities must be approved by the Bureau as set forth in § 38.2-2223 of the Code of Virginia:

- a risk retention group chartered in Virginia; or
 - a licensed insurer that transacts the Business of insurance with a risk purchasing group domiciled in Virginia.
7. The Virginia Surplus Lines Association is a private organization and not sanctioned by the State Corporation Commission. Contact information is as follows: Greg P. Provenzo, c/o Atlantic Specialty Lines, Inc., gregpov@atlanticspecial.com.
 8. Effective July 1, 2008, the Virginia legislature eliminated the due diligence requirement that surplus lines brokers attempt to procure insurance from a licensed insurer before he provides a surplus lines policy. An affidavit affirming that notice has been given to the insured that the insurance is not placed with a Virginia licensed insurer must still be filed within the Virginia State Corporation Commission within 30 days after the end of each quarter.
 9. Virginia enacted Legislation in 2015 increasing the maximum assessment of fire insurance companies, including surplus lines policies, for the Fire Programs Fund from .001 to .025%.

GENERAL INFORMATION:

1. Washington **does not maintain** a list of eligible surplus lines insurers.
2. Washington **does** have a Surplus Lines Association (see Other Comments section #2).
3. Washington **does not** have an Export List.
4. Washington **does not** have an industrial insured but does recognize the NRRA exempt commercial purchaser exemption (RCW 48.15.010).
5. **Surplus lines tax:** 2%, payable by surplus lines broker, plus 0.10% stamping fee.
6. Washington has not affiliated with any existing compact (HB 1694). Washington has adopted enabling legislation, but has not entered into any tax sharing arrangement with other states. If Washington State is the home state of the insured, the tax is computed on the entire premium, without regard to whether the policy covers risks or exposures that are located in other states. The commissioner will issue additional guidance if and when Washington enters into a multi-state compact.
7. Washington **does not** permit Direct/Independent procurement. All surplus line insurance must be procured by a licensed surplus lines broker if Washington is the home state of the Insured.
8. Washington **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

Washington will not be imposing fees for eligibility. Insurers should submit annual and quarterly filings to the stamping office, the Surplus Line Association of Washington. Contact information and service of process should be sent to Washington DOI as well as the stamping office.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Alien insurers must be on the Quarterly Listing of Alien Insurers maintained by NAIC. RCW 48.15.090(1)(b).

If alien is not on NAIC List, broker must obtain a waiver of the solvency requirements from the Commissioner as permitted by WAC 284-15-050.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

Surplus lines brokers may not place coverage with a nonadmitted insurer unless, at the time of placement, the nonadmitted insurer:

- is authorized to write such insurance in its domiciliary jurisdiction; and
- possesses capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of Washington or \$15 million.

RCW 48.15.090(1)(a)(i)

The commissioner may waive the minimum capital and surplus requirement for a nonadmitted insurer if he makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. RCW 48.15.090(1)(a)(ii). The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. RCW 48.15.090(1)(a)(ii)

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Ocean marine and foreign trade insurances.
2. Insurance on subjects located, resident, or to be performed wholly outside of Washington or on vehicles or aircraft owned and principally garaged outside of Washington.
3. Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.
4. Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of the aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of the aircraft.

OTHER COMMENTS OR REQUIREMENTS:

1. Policy filings and surplus lines broker certificates must be filed with the Surplus Line Association within 60 days of procurement.
2. Contact information for the Surplus Line Association of Washington is as follows:
Robert R. Hope, Executive Director
Surplus Line Association of Washington
600 University Street, Suite 1710
Seattle, Washington 98101-1192
Tel.: (206) 224-4230
Cell: (206) 818-3437
Email: bob@surpluslines.org.
3. Non-resident surplus line broker license may be issued: 1) if the laws of the state, province or domicile of the non-resident extend a similar privilege to residents of Washington; and 2) the non-resident must meet the same qualifications, other than residency, as any other person seeking to be licensed as a surplus line broker under RCW 48.15.

A non-resident surplus lines broker has all the same responsibilities as any other surplus lines broker and is subject to the commissioner's supervision and rules adopted under RCW 48.15.

4. Every insurance contract, including those evidenced by a binder, procured and delivered as a surplus lines coverage must have a conspicuous statement stamped upon its face, which must be initialed by or bear the name of the surplus lines broker who procured it, as follows:

“This contract is registered and delivered as a surplus line coverage under the insurance code of the state of Washington, Title 48RCW. It is not protected by any Washington state guaranty association law.”

5. Surplus lines brokers are no longer required to submit full copies of the policies when filing; but are required to submit the following documents with a certification form to Surplus Lines Association of WA:

- policy declarations, certificate or covernote declarations;
- supplemental declarations;
- schedule of forms and endorsements; and
- copies of service of suit endorsement.

If policy documents are not available within 60 days, broker should complete the certification form and file these policy documents upon receipt.

GENERAL INFORMATION:

1. West Virginia **does maintain** a list of eligible surplus lines insurers (see Other Comments Section #1).
2. West Virginia **does** have a Surplus Lines Association.
3. West Virginia **does** have an Export List (see Other Comments section #1).
4. West Virginia **does** have an industrial insured exemption applicable to captive insurers only (see Appendix C) and has also adopted the NRRA exempt commercial purchaser exemption (§ 33-12C-3(f)).
5. **Surplus lines tax:** 4.55%, collected and remitted to Commissioner by surplus lines licensee. The surplus lines tax is imposed on gross fees charged to the policyholder in addition to net premiums.
6. West Virginia has not affiliated with any existing compact (SB 435). Currently, West Virginia uses home state taxation.
7. West Virginia **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

1. **Application.**
2. **Plan of Operation.**
3. **Requalification Fee:** \$100.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

1. **NAIC Listing.**
2. Current **Certificate of Authority** from the Insurance Regulatory Authority in jurisdiction of domicile.
3. Attestation of Filing of **IID Financial Format.**
4. Description of products to be sold in West Virginia (Form SL-2) and proposed business plan if amended or changed from the initial filing.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

1. **Certificate of Authority** from the Insurance Regulatory Authority in state of domicile.

2. **Capital and Surplus** of no less than \$15,000,000.
3. **Annual Statement:** Signed with Jurat page.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

Transactions in West Virginia relative to a policy issued or to be issued outside West Virginia involving insurance on cargo vessels, their craft or hulls, their cargoes, marine builder's risks, marine protection and indemnity or other risks, including strikes and war risks, commonly insured under ocean or wet marine forms of policy.

OTHER COMMENTS OR REQUIREMENTS:

1. West Virginia eligibility and export lists are available at:
Eligibility list:
<https://www.wvinsurance.gov/company>
Export List:
<https://www.wvinsurance.gov/Portals/0/pdf/agents/Surplus%20Lines%20Export%20List%20001-28-2021.pdf?ver=2021-01-28-141225-593>.
2. Surplus lines licenses may procure insurance from unlicensed insurers if the business is not procurable from a licensed company.
3. Insurer must be solvent.
4. The surplus line broker may charge the prospective policyholder a fee for the cost of underwriting, issuing, processing, inspecting, servicing or auditing the policy for placement with the excess line insurer if:
 - The service is required by the excess line insurer.
 - The service is actually provided by the surplus line licensee or the cost of the service is actually incurred by the surplus line licensee.
 - The provision or cost of the service is reasonable, documented and verifiable.
5. West Virginia essentially adopted the NAIC Nonadmitted Insurers Model Act effective 6/5/03. The legislation amended and reenacted the West Virginia Surplus Lines – Nonadmitted Insurance Act by substituting §§ 33-12C-1 through 33-12C-29 for the former §§ 33-12C-1 through 33-12C-15. The new provisions are significantly different from the prior law.

6. Effective 1/1/05, the countersignature requirements of West Virginia Code § 33-12C-24 are no longer required.
7. Inquiries may be directed to:
Financial Conditions Division
P.O.Box 50540
Charleston, WV 25305-0540
Phone: 304-558-2100
Fax: 304-558-1365
For tax related questions:
oiwvntaxsection@wv.gov
For general questions:
dean.e.hastings@wv.gov.
8. The surplus lines licensee shall give the following consumer notice to every person applying for insurance with a nonadmitted insurer. The notice shall be printed in sixteen-point type on a separate document affixed to the application. The applicant shall sign and date a copy of the notice to acknowledge receiving it. The surplus lines licensee shall maintain the signed notice in its file for a period of ten years from expiration of the policy. The surplus lines licensee shall tender a copy of the signed notice to the insured at the time of delivery of each policy the licensee transacts with a nonadmitted insurer. The copy shall be a separate document affixed to the policy.
9. No contract of insurance placed by a surplus lines licensee in West Virginia shall be binding upon the insured and no premium or fee charged shall be due and payable until the surplus lines licensee shall have notified the insured in writing, in a form acceptable to the commissioner, a copy of which shall be maintained by the licensee with the records of the contract and available for possible examination, that:
 - the insurer with which the licensee places the insurance is not licensed by this state and is not subject to its supervision; and
 - in the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.
 - Nothing herein contained shall nullify any agreement by any insurer to provide insurance.
10. Eligibility, filing requirements and attestation forms can be found on the WVDOI website at www.wvinsurance.gov by clicking on Insurance Company Information, then click "Forms".
11. Each surplus lines insurance policy or evidence of insurance shall have printed or stamped in contrasting color on the front page the following statement:

THIS COMPANY IS NOT LICENSED TO DO BUSINESS IN WEST VIRGINIA AND IS NOT SUBJECT TO THE WEST VIRGINIA INSURANCE GUARANTY ACT.

"Notice: 1. An insurer that is not licensed in this state is issuing the insurance policy that you have applied to purchase. These companies are called "nonadmitted" or "surplus lines" insurers. 2. The insurer is not subject to the financial solvency regulation and enforcement that applies to licensed insurers in this state. 3. These insurers generally do not participate in insurance guaranty funds created by state law. These guaranty funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised. 4. Some states maintain lists of approved or eligible surplus lines insurers and surplus lines brokers may use only insurers on the lists. Some states issue orders that particular surplus lines insurers cannot be used. 5. For additional information about the above matters and about the insurer, you should ask questions of your insurance agent or surplus lines licensee. You may also contact your insurance commission consumer help line."

GENERAL INFORMATION:

1. Wisconsin **does not** maintain a list of eligible surplus lines insurers (see Other Comments section #2).
2. Wisconsin **does not** have a Surplus Lines Association.
3. Wisconsin **does not** have an Export List.
4. Wisconsin **does not** have an industrial insured exemption but has adopted the NRRA exempt commercial purchaser exemption.
5. **Surplus lines tax:** 3% payment is the joint responsibility of the broker and policyholder.
6. Wisconsin has not affiliated with any existing compact but has taken legislative action to comply with NRRA.
7. Wisconsin **does** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

Wisconsin may not prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted alien insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

Wisconsin may not impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a U.S. jurisdiction, except:

- Wisconsin may require that the insurer be authorized to write the type of insurance in its domiciliary jurisdiction; and
- Wisconsin may require that the insurer have capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:
 - The minimum capital and surplus requirements under the law of Wisconsin; or
 - \$15,000,000

The insurance commissioner may waive the minimum capital and surplus requirements above if the

commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

Wisconsin lists types of insurance that cannot be written by unlicensed insurers. Such prohibited coverages include title, mortgage guaranty, accident and health, or workers' compensation insurance.

OTHER COMMENTS OR REQUIREMENTS:

1. Further information at http://oci.wi.gov/pub_list/pi-026.htm.
2. Section 618.41 (6)(d), Wis. Stat., states that the Commissioner may issue lists of unauthorized nondomestic insurers (surplus lines carriers) he or she believes to be reliable and solid. In 2004, the Wisconsin Insurance Commissioner determined that he could no longer provide the lists contemplated in s. 618.41 (6)(d), Wis. Stat., and would no longer evaluate financial statements submitted to the Commissioner's office for that purpose.
3. Every new or renewal insurance policy procured and delivered in Wisconsin shall bear the name and address of the insurance agent or broker who procured it and shall have stamped or affixed upon it the following: **“This insurance contract is with an insurer which has not obtained a certificate of authority to transact regular insurance business in the state of Wisconsin, and is issued and delivered as a surplus line coverage pursuant to s. 618.41 of the Wisconsin Statutes. Section 618.43(1), Wisconsin Statutes, requires payment by the policyholder of 3% tax on gross premium.”**
4. The Wisconsin Legislature enacted legislation in 2017 to allow domestic surplus lines companies in Wisconsin.

WYOMING

WY

GENERAL INFORMATION:

1. Wyoming **does not maintain** a list of eligible surplus lines insurers.
2. Wyoming **does not** have a Surplus Lines Association.
3. Wyoming **does** have an Export List (see Other Comments section #1).
4. Wyoming **does** have an industrial insured exemption (see Appendix C). Additionally, Wyoming has adopted the NRRA exempt commercial purchaser exemption (W.S. § 26-11-104(b)).
5. **Surplus lines tax:** 3% plus, 0.175% SLAS Clearinghouse transaction fee.
6. Wyoming adopted **NIMA** (HB 242); however, the Board of Directors of NIMA voted on April 28, 2016 to discontinue operations and dissolve the NIMA, Inc. organization. Beginning October 1, 2016, all new and renewal multistate policies for Wyoming will be reported as single state policies through the SLAS Clearinghouse single state reporting platform in SLIP, with 100% of the premium being reported to and taxed by the respective home state.
7. Wyoming **does not** allow domestic surplus lines insurers in the state.

ELIGIBILITY AND FILING REQUIREMENTS (ALL INSURERS):

Wyoming does not require foreign or alien insurers to provide financial information or remit an application or renewing fee but has adopted W.S. § 26-11-107 which sets forth minimum eligibility standards for both foreign and alien surplus lines insurers.

ELIGIBILITY AND FILING REQUIREMENTS (FOREIGN INSURERS ONLY):

W.S. § 26-11-107(f) A nonadmitted insurer eligible to place surplus lines insurance or independently procured insurance shall:

- be authorized to write the kind of insurance in its domiciliary jurisdiction;
- have established satisfactory evidence of good repute and financial integrity; and

- be qualified under one (1) of the following subparagraphs:
 - a) Have capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:
 - I. the minimum capital and surplus requirements under the law of this state; or
 - II. fifteen million dollars (\$15,000,000.00).
 - b) The requirements of subparagraph (A) of this paragraph may be satisfied by an insurer's possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability and company record and reputation within the industry. In no event shall the commissioner make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars (\$4,500,000).

ELIGIBILITY AND FILING REQUIREMENTS (ALIEN INSURERS ONLY):

For an insurer not domiciled in the United States or its territories, the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC International Insurers Department.

TYPES OF INSURANCE EXEMPTED FROM SURPLUS LINES REGULATION:

1. Wet marine and transportation insurance.
2. Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.
3. Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of the aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of the aircraft.
4. Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in

scheduled interstate flight, or cargo of the aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of the aircraft.

OTHER COMMENTS OR REQUIREMENTS:

1. Insurance coverages available for export in Wyoming include: liquor dealers liability, lawyers professional liability, accountants professional liability, architects and engineers professional liability, and pension and welfare fund fiduciary responsibility insurance.
2. Broker must ascertain financial condition and compliance with eligibility requirements before placing insurance with a non-admitted insurer (W.S. § 26-11-107).
3. The Wyoming Insurance Department issued a Memorandum in 2018 requiring all non-admitted insurance policies issued or renewed and any subsequent endorsements to be filed through the SLAS Clearinghouse and provides guidance for filing policy transaction data, quarterly reports and premium tax payments.
4. Contact Information for the SLAS Clearinghouse is as follows:
SLAS Clearinghouse
(Florida Surplus Lines Service Office)
1441 Maclay Commerce Drive, Suite 200
Tallahassee, FL 32312
Tel: (877) 267-9855
Email: info@slasclearinghouse.com
Website: <https://www.slasclearinghouse.com/>
5. Every new or renewed insurance contract, certificate, cover note or other confirmation of insurance that is procured and delivered as a surplus lines coverage pursuant to this chapter shall have stamped or printed upon it, in at least ten (10) point bold type font, the name and address of the surplus line broker who procured the coverage, and the following disclosure: "**This insurance contract is issued pursuant to the Wyoming Nonadmitted Insurance Laws by an insurer neither licensed by nor under the jurisdiction of the Wyoming Insurance Department. In the event of insolvency of the surplus lines insurer, losses will not be paid by the Wyoming Insurance Guaranty Association or the Wyoming Life and Health Guarantee Association.**" (W.S. § 26-11-109(a)). (In February of 2021, the Wyoming legislature introduced House Bill No. HB0092, which, if passed into law, would adjust the language of the required disclosure stamp.)
6. The Wyoming Insurance Department issued a Memorandum on October 23, 2020 providing updates regarding changes to the required policy disclosure notices and the diligent effort search requirements. This Memorandum, and additional information and required forms are available at the Department's website:
<http://doi.wyo.gov/companies/surplus-lines> and
<https://doi.wyo.gov/licensing/surplus-lines-broker>.

APPENDIX A

SURPLUS LINES TAX LAWS BY STATE

<i>State</i>	<i>Statutory Citation To Insurance Code</i>	<i>Tax Rate Applied</i>
Alabama	§27-10-31	6% (annually)
Alaska	§21.33.055 §21.34.180 §21.34.190	2.7% (+1% filing fee) (quarterly) 0.75% (wet marine) (annually)
Arizona	§20-415 §20-416(a)	3% (semi-annually) (+ 0.20% stamping fee). Multi-state risks (quarterly).
Arkansas	§23-65-315	4% (within 60 following the calendar quarter that the business was transacted).
California	§1775.5 §1775.1(a)	3% (+ stamping fee of 0.25%, effective Jan. 1, 2020) (monthly or annual based on prior year tax liability).
Colorado	§10-5-111	3%
Connecticut	§38a-743	4% (quarterly)
Delaware	§1925	3%
District of Columbia	§31-2502.40	2% (semi-annually)
Florida	§626.932 §626.921(f)	4.94% (not wet marine and transportation), plus 0.06% service fee paid by the insured to the surplus lines agent, who remits to the FLSO.
Georgia	§33-5-31	4% (quarterly)
Hawaii	§431:8-315	4.68% (quarterly)
Idaho	§41-1229	1.50% (+ stamping fee of 0.50%) (annually)
Illinois	215 ILCS 5/445	3.5% (+ up to 1% fire marshal tax) (semi-annually) 0.075% stamping fee (monthly)
Indiana	§27-1-15.8-4	2.5% (annually)
Iowa	§515L.3(2) §432.1(4)(a)-(e)	1.00% (annually)

<i>State</i>	<i>Statutory Citation To Insurance Code</i>	<i>Tax Rate Applied</i>
Kansas	§40-246c	6% (annually)
Kentucky	§304.10-180	3% plus 1.8% surcharge, payable by broker (annually)
Louisiana	§22:439	4.85% (quarterly)
Maine	Title 24-A §2016 Title 36 §2513	3% of difference between gross premiums and return premiums (within 45 days of end of each quarter and annually)
Maryland	§3-324, §3-325	3% (quarterly and semi-annually)
Massachusetts	Ch. 175 §168 Ch. 175 §169	4% (annually)
Michigan	§500.1905(3)(d)	2% (+ regulatory fee of 0.5% on premiums written in the state) (semi-annually)
Minnesota	§297I.05(7)(a)	3%, less returns and dividends, plus .08% stamping fee (.06% for transactions with an effective date on or after 1/1/2013) (payable by individual licensee bi-annually)
Mississippi	§83-21-25	4% premium tax plus 3%, wind pool fee (reduced from 5% to 3% eff. 7/1/2012), plus 0.25% stamping fee, payable by broker or agent.
Missouri	§384.059, §384.061	5% (annually)
Montana	§33-2-311, §33-2-705(2), §33-2-321, §50-3-109(1)	2.75%, plus 0.25% stamping fee (0% stamping fee if policy is filed electronically) and 2.5% additional tax on fire portions of surplus lines payments (annually).
Nebraska	§44-5506 §81-523	3% (quarterly)
Nevada	§685A.180(1) §680B.027(1)	3.5% (+ 0.4% stamping fee applicable to all premiums) (quarterly).
New Hampshire	§405:29	3% (annually)
New Jersey	§17:22-6.59	5% (quarterly)
New Mexico	§59A-6-2	3.003% (quarterly)
New York	§21 18(d)(1)	3.6% (+ 0.17% stamping fee payable to ELANY on all excess lines placements) (Additional fee of \$25 for late/erroneous filing).

<i>State</i>	<i>Statutory Citation To Insurance Code</i>	<i>Tax Rate Applied</i>
North Carolina	§58-21-85	5% (filing dates vary for resident and non-resident agents) plus a 0.4% stamping fee payable to the NC Surplus Lines Assn.
North Dakota	§26.1-03-17 §26.1-44-06	1.75% (annually)
Ohio	§3905.36	5% (annually before March 31)
Oklahoma	36 §§629 1115	6% (on or before end of month following calendar quarter) If premium tax of previous year greater than \$1000, remit quarterly estimates.
Oregon	§731.820(1) §735.470	2% payable by broker, and an additional 0.3% fire marshal tax payable by broker, plus \$10 flat service charge applicable for each new or renewal (not endorsement) transaction. Non-admitted wet marine and transportation policies are subject to a 3/4 of 1% (0.0075%) premium tax, plus a \$100 flat service charge per policy (new, renewal and endorsement), payable to the Surplus Lines Association of Oregon.
Pennsylvania	§40 §991.1621	3% (+ \$20 stamping fee) (annually) (Note: stamping fee becomes \$45 if received after 45 days from the effective date of the placement and becomes \$70 if received timely yet missing the producer affidavit).
Puerto Rico	T.26 §1013	9% (within 60 days) This tax does not apply to medical/hospital professional malpractice coverage.
Rhode Island	§27-3-38(d)	4% (quarterly estimate, plus annual broker report).
South Carolina	2012 S.C.Act 283	6% blended rate, paid by broker online to the South Carolina DOI. The 2% municipal business tax no longer applies.
South Dakota	§58-32-44 refers to Title 10 (Taxation) §10-44-2(3) §10-44-9	2.5% payable by broker 3% for fire insurance (annually, except if more than \$5,000 of surplus lines premium tax, then quarterly)
Tennessee	§56-14-113 §56-4-206	5% on gross premiums (less return premiums where the insurance covers an insured where the home state is Tennessee).
Texas	Ins. § 225.004	4.85% (+ stamping fee of .07%)
Utah	R 590-157-5 § 31 A-3-301 §31A-15-103	4.25% (+ 0.18% stamping office fee) (not ocean marine insurance) (due 25th day of the following month closing the quarter)

<i>State</i>	<i>Statutory Citation To Insurance Code</i>	<i>Tax Rate Applied</i>
Vermont	T.8 §5035	3% (quarterly)
U.S. Virgin Islands	T.22 §662(a) T.22 §603(b)	5% (quarterly)
Virginia	§38.2-4809(A)(1) refers to Article 1, Title 58.1-2500 et seq. (Taxation) §58.1-2501(A)(1)	2.25% (except workers' compensation) (quarterly if premium tax liability is expected to exceed \$1,500)
Washington	§48.14.020 §48.15.120	2% (+0.10% stamping fee) (annually by March 1)
West Virginia	§33-12C-7	4.55% (quarterly)
Wisconsin	§618.43 Ins. Reg. 6.17	3% (annual by March 1)
Wyoming	§26-11-118 §26-11-124	3% (quarterly)

APPENDIX B

DIRECT PROCUREMENT TAX LAWS BY STATE

<i>State</i>	<i>Statutory Citation To Insurance Code</i>	<i>Tax Rate Applied</i>
Alabama	§27-10-35(c)	4% (within 30 days)
Alaska	§21.33.061	3.7% (annually) 0.75% (wet marine, transportation)
Arizona	§20-401.07(a)	3% (annually)(Industrial Insurance only)
Arkansas	§23-65-103(c)	2% (within 30 days after insurance procured, continued or renewed)
California	§1760(b) Cal. Ins. Code Cal. Rev. & Tax Code §13201	3% (Payable on or before the 1 st day of the 3 rd month following the close of any calendar quarter during which a nonadmitted insurance contract took effect or was renewed.)
Colorado	§10-3-903(2)(d) §10-3-209 §10-3-909 §10-5-111 §10-5-111.5	3% (annually)
Connecticut	§38a-271 §38a-277(c)	4% (annually) (excluding wet marine and transportation)
Delaware	18 § 1925(b) and (e) 18 § 1926(d)	3% (annually)
District of Columbia	-----	-----
Florida	§626.938(3)	5% plus 0.15% service fee payable to the FLSO (Insured must also report the premium to the FLSO using forms designated by the FLSO or in a computer readable format.)
Georgia	§33-5-33(b)	4% (within 30 days)
Hawaii	§431:8-205(c)	4.68% (within 60 days)

<i>State</i>	<i>Statutory Citation To Insurance Code</i>	<i>Tax Rate Applied</i>
Idaho	§41-1215 §41-1229 §41-1233	1.5% (within 30 days of policy documents being received by the broker)
Illinois	215 ILCS 5/121-2.08	0.5% (+ up to 1% fire marshal tax) (file within 90 days of eff. date, pay within 30 days of filing) 0.075% stamping fee
Indiana	-----	-----
Iowa	§515I.10 §432.1 (4)(a) - (e)	1%
Kansas	-----	-----
Kentucky	§304.11-030 §304.11-050(1)	2% (annually)
Louisiana	§22:439	4.85% (quarterly at the annual rate)
Maine	Title 24-A Title 36 § 2531(2)	3% payable by insured
Maryland	§4-210 §4-211(b)(1)	3% (annually)
Massachusetts	-----	-----
Michigan	§500.1951	2% 0.5% (regulatory fee) (within 30 days)
Minnesota	§60A.19(8) §297I.05 (subd. 7) (b)	2% (annually) (except life insurance)
Mississippi	§83-5-61	4% premium tax and 5% nonadmitted policy fee (for policies issued or renewed on or after 3/11/11; 3% for policies issued against fire, lightning or tornado)
Missouri	§384.051(6)	5% (annually)
Montana	§33-2-705	2.75% (annually)
Nebraska	§44-5515, §44-5506(4)(a)	3% (quarterly) (only with respect to exempt commercial purchasers)
Nevada	§680B.040 §680B.027(1)	3.5% (within 30 days)
New Hampshire	§405-B:6 §406-B:17(III) §406-B:17-a	4% (annually) 2% (marine)
New Jersey	§17:22-6.64	5% (within 30 days)

<i>State</i>	<i>Statutory Citation To Insurance Code</i>	<i>Tax Rate Applied</i>
New Mexico	§7-40-1 <i>et. seq.</i> §59A-14-1 §59A-15-2 §59A-15-4	3.003% (within 90 days)
New York	N.Y. Tax Law §1551 N.Y. Tax Law §1554	3.6% (within 60 days after end of quarter in which business was procured)
North Carolina	§58-28-5(b)	5% (within 30 days)
North Dakota	§26.1-44-10 §26.1-44-03.1	1.75% (annually)
Ohio	§3905.36	5% (annually)
Oklahoma	§1115(B)(1)	6% (annually)
Oregon	§735.417 §735.470	2% state premium tax 0.3% fire marshal tax, payable by insured. Each policy is also subject to a \$10 flat service charge, payable to the Surplus Line Association of Oregon. (Insured must also file a written report with Oregon Director, within 30 days after insurance was procured, showing name and address of insurer; the subject of the insurance; the amount of the premium charged; and any additional pertinent information reasonably requested by the Director).
Pennsylvania	§40-15-122(b)	3% (within 30 days)
Puerto Rico	T.26§702 T.26§702c T.26§1020	64% (3% on annuity remuneration) (only applies to insurers) For taxable years beginning after December 31, 2012, there shall be imposed a special 1% tax on the premiums of every insurer, in addition to the 6% tax on premiums, and to any other tax imposed under this Code. For purposes of this special tax, the term “premiums earned” refers to the net reinsurance premiums written according to the Insurer Annual Report filed with the Office of the Insurance Commissioner, pursuant to the rules of the NAIC. (Premiums earned on Medicare Advantage, Medicaid, and premiums earned on the “Mi Salud” Program or on annuities are exempted from the special 1% tax)). 15% of the total premium charged by the unauthorized insurer. (to be withheld by the insured and paid within 30 days after the effective date of the policy. This tax does

<i>State</i>	<i>Statutory Citation To Insurance Code</i>	<i>Tax Rate Applied</i>
Puerto Rico (cont'd)		not apply to medical/hospital professional malpractice coverage.
Rhode Island	§27-3-38.1	4% (Insured must also file written report with the tax administrator, in a form that he or she may prescribe, within 30 days after the date the insurance was procured, continued or received).
South Carolina	-----	-----
South Dakota	§58-32-47 §58-32-50	2.5% (within 30 days)
Tennessee	§56-2-411	5% (paid at the same time, in the same manner, and at the same rate as the tax levied on surplus lines insurance)
Texas	§226.053(a)	4.85% (annually)
Utah	§31A-15-104 §31A-3-301	4.25% (within 60 days) (excluding ocean marine, insurance premiums paid by institutions within the state system of higher education, and annuities)
Vermont	§5036(d)	3% (annually)
U.S. Virgin Islands	§603(b)	5% (quarterly)
Virginia	§38.2-1802(A)	-----
Washington	-----	-----
West Virginia	-----	-----
Wisconsin	§618.42 §618.43(1)(a)	3% (within 60 days)
Wyoming	§26-11-118 §26-11-124	3% (quarterly)

Notes:

1. Direct Procurement Taxes are calculated in most states as a percentage of gross premiums.
2. In most of the states, written reports of direct placements are required to be filed with the Insurance Department within 30, 60 or 90 days.

APPENDIX C

INDUSTRIAL INSURANCE – EXEMPTIONS BY STATE

<i>State</i>	<i>Industrial Insured Statutory Requirements</i>	<i>Statutory Reference To Insurance Code</i>	<i>Statutory Reference To Exempt Commercial Purchaser</i>
Alabama	1) Insurance procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant; 2) Minimum \$25,000 aggregate annual premiums on all risks other than workers' compensation and group insurance; and 3) Minimum 25 employees.	§27-10-20(2)	Not codified
Alaska⁽¹⁾	No		§21.34.020(b), §21.34.900(6) Same as NRRA Bulletin B 19-15 updates the amounts in subclauses (I), (II), and (IV) of clause (C) in 15 U.S.C.(5)(C)(ii)
Arizona	1) Insurance procured through qualified risk manager; 2) Minimum \$100,000 aggregate annual gross premiums for insurance on all property and casualty risks; and 3) Meets at least one of the following criteria: <ul style="list-style-type: none"> a) Minimum \$20 million net worth; b) Minimum \$50 million net revenues or sales; c) Minimum 500 full-time employees per individual company or 1,000 full-time employees per holding company; d) municipality with a minimum population of 50,000 e) nonprofit or public entity with a minimum \$30 million in expenditures Qualified risk manager has the same definition as the NRRA. Arizona's exemption for industrial insureds is the same exemption as under the NRRA, Bulletin 2011-06 (June 28, 2011).	§20-401.07(C)	Arizona uses the term "industrial insured," rather than "exempt commercial purchaser." Bulletin 2011-06 (June 28, 2011)

<i>State</i>	<i>Industrial Insured Statutory Requirements</i>	<i>Statutory Reference To Insurance Code</i>	<i>Statutory Reference To Exempt Commercial Purchaser</i>
Arizona (cont'd)	3% (annually). §20-401.07(A).		
Arkansas⁽²⁾	1) Insurance procured through full-time risk manager or insurance manager or utilizes the services of a regularly and continuously qualified insurance consultant; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees. Subject to taxes specific to captives under §23-63-1614.	§23-63-1601(12)	§23-65-304(5), §23-65-305 Same as NRRA Subject to 2% tax (within 30 days after insurance procured, continued or renewed) (includes surplus lines insurance when procured without use of a surplus lines broker). §23-65-103(c).
California⁽³⁾	1) Employs at least 25 employees on average during the prior 12 months; and 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks other than workers' compensation and health coverage; or insurance procured through full-time employee acting as an insurance manager or "continuously retained insurance consultant." "Continuously retained insurance consultant" does not include: a) an agent or broker through whom the insurance is being placed; b) an subagent or subproducer involved in the transaction; or c) an agent or broker that is a business organization employing or contracting with any person mentioned in clauses (a) and (b).	CIC §1764.1(c)(1)	California uses the term "commercial insured" rather than "exempt commercial purchaser" CIC 1760.1(b) and 1763(h)
Colorado	1) Insurance (excluding life and annuity contracts) procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant who does not receive commission or compensation for placing the risk; 2) Minimum \$100,000 aggregate annual premiums on all risks; and 3) Minimum 100 full-time employees.	§10-3-910(2)	Not codified
Connecticut	1) Insurance procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant; and 2) Minimum \$50,000 aggregate annual premiums (excluding life, accident and health insurance).	§38a-271(b)(6)	Conn. Gen. Stat. § 38a-741(b)(2); Bulletin SL-2 (July 18, 2011) Same as NRRA
Delaware⁽²⁾	1) Insurance procured through full-time insurance manager or buyer; and	§6902(20)	§1914(b); Surplus Lines Bulletin 14 (August 11, 2014)

<i>State</i>	<i>Industrial Insured Statutory Requirements</i>	<i>Statutory Reference To Insurance Code</i>	<i>Statutory Reference To Exempt Commercial Purchaser</i>
Delaware⁽²⁾ (cont'd)	2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees. No information regarding taxes. Subject to taxes specific to captives under §6914.		Same as NRRA Subject to 3% tax for new and renewal policies with an effective date on or after July 30, 2014. Surplus Lines Bulletin 14 (August 11, 2014).
District of Columbia	No	---	Not codified
Florida	No.	§626.938	Industrial exemption/not codified. Recognizes Independently Procured coverage.
Georgia⁽²⁾	1) Insurance procured through full-time insurance manager, risk manager or insurance buyer, or through licensed property and casualty agent, broker or counselor; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Meets one of the following criteria: a) Minimum 25 full-time employees; b) Minimum \$3 million gross assets; or c) Minimum \$5 million annual gross revenues. Subject to taxes specific to captives under §33-41-22.	§33-41-2(5)	§33-5-20.1(1); Bulletin 11-EX-3 (September 12, 2011) Same as NRRA Subject to 4% tax (within 30 days). §33-5-33(a); Bulletin 11-EX-3 (September 12, 2011).
Hawaii	No	---	§431:8-102; Memorandum 2011-4E (October 18, 2011) Same as NRRA Subject to 4.68% tax (within 45 days after the end of the calendar quarter in which the insurance was procured, continued, or renewed). §431:8-205(b) and (c); Memorandum 2011-4E (October 18, 2011).
Idaho	No	---	§41-1213(5)(a) and (b); Bulletin 11-08 (November 28, 2011) Same as NRRA “Commercial insurance” defined as “property and casualty insurance pertaining to a business, profession, occupation, nonprofit organization or public entity.” §41-1213(5)(c). Subject to 1.5% tax for policies new and renewal policies with an

<i>State</i>	<i>Industrial Insured Statutory Requirements</i>	<i>Statutory Reference To Insurance Code</i>	<i>Statutory Reference To Exempt Commercial Purchaser</i>
Idaho (cont'd)			effective date on or after July 1, 2011 (within 30 days after insurance procured, continued or renewed). § 41-1215; §41-1233(1) and (3); 41-1229(1).
Illinois ⁽⁴⁾	1) Insurance (excluding life and annuity contracts) procured through full-time employee who is a qualified risk manager (as defined in the NRRA) or a regularly and continuously retained consultant who is a qualified risk manager. 2) Procured directly from an unauthorized insurer without the services of an intermediary insurance producer. 3) Insured is an exempt commercial purchaser (as defined in the NRRA) whose home state (as defined in the NRRA) is Illinois. 4) Must file policies (effective 1/1/15 or later) within 90 days of effective date, and endorsements within 90 days of issuance. 5) Must pay taxes and filing fees within 30 days of filing. Tax is 3.5% plus up to 1% fire marshal tax on property (depending on coverage). Filing fee is 0.2% of premium.	215 ILCS 5/121-2.08 215 ILCS 5/123C-1(F) is a separate and different definition that relates to Illinois domestic captives only)	215 ILCS 5/445(1) Same as NRRA
Indiana	1) Insurance procured through full-time insurance manager or buyer, or regularly retained and continuously qualified insurance consultant; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; 3) Minimum 25 full-time employees; and 4) Remits a 2.5% tax on all gross premiums by February 1 along with an affidavit specifying all transactions undertaken in the previous year.	§27-4-5-2(a)(8)	Not codified
Iowa	No	---	Not codified
Kansas ⁽²⁾	<u>Industrial Insured:</u> 1) Insurance procured through full-time insurance manager or buyer; 2) Minimum \$50,000 aggregate annual premiums for the kinds of insurance procured; 3) Minimum 25 full-time employees; 4) Principal activity consists of the manufacture of a product or products; and 5) Minimum \$10,000 contributed to the capital or surplus of the industrial insured	§40-4301(e)	§40-246i

<i>State</i>	<i>Industrial Insured Statutory Requirements</i>	<i>Statutory Reference To Insurance Code</i>	<i>Statutory Reference To Exempt Commercial Purchaser</i>
Kansas⁽²⁾ (cont'd)	<p>captive insurance company that insures its risks.</p> <p><u>Exempt Commercial Purchaser:</u></p> <ol style="list-style-type: none"> 1) Employs or retains a qualified risk manager to negotiate insurance coverage; 2) Maintains paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 annually; and 3) Possesses a net worth in excess of \$20,040,000; generates annual revenues in excess of \$55,100,000; employs more than 500 full-time employees per insured entity or is a member of an affiliated group employing more than 1,000 employees; is a not-for-profit organization or public entity with annual expenditures of at least \$33,060,000; or is a municipality with a population in excess of 50,000 persons. 		
Kentucky⁽⁷⁾	<p><u>Industrial Insured:</u></p> <ol style="list-style-type: none"> 1) Insurance (excluding life and annuity contracts) procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; 3) Minimum 25 full-time employees; and 4) Qualified as an industrial insured as of July 1, 1999. <p><u>Exempt Commercial Policyholder.</u> Employs the services of an insurance agent or broker, procures commercial insurance with the services of a full-time risk manager, or a licensed insurance consultant, and:</p> <ol style="list-style-type: none"> 1) Is a city, county, or urban-county with minimum population of 50,000 persons, or the Commonwealth of Kentucky, or a not-for-profit organization or a public entity with a minimum \$25,000,000 annual budget or \$25,000,000 in assets in the preceding fiscal year; or 2) Certifies that it meets all four (4) of the following criteria: <ol style="list-style-type: none"> (i) Minimum \$25,000,000 net worth at the time the policy of insurance is issued; (ii) Minimum \$50,000,000 net revenue or sales in the preceding fiscal year; (iii) Minimum 100 employees per 	<p>§304.11-020(2)(a) and (c)</p> <p>§304.49-010(7)</p> <p>806 KAR 11:010, § 1</p>	<p>§ 304.10.030, § 304.10.040; Advisory Opinion 2011-04 (June 3, 2011) includes an alternate definition of ECP</p> <p>Same as NRRA.</p> <p>To the extent that a prospective insured meets either the KY or Federal definition of an exempt commercial purchaser, KY's due diligence requirement is preempted. The definitions of an exempt commercial purchaser under NRRA and an exempt commercial policyholder under KY law differ slightly. If an insured meets the definition of an exempt commercial purchaser under NRRA, federal law will govern the multi-state non-admitted insurance transaction covering the exempt commercial policyholder. In this event, the surplus lines broker placing the coverage must comply with the taxation requirements applicable to other multi-state non-admitted insurance transactions.</p>

<i>State</i>	<i>Industrial Insured Statutory Requirements</i>	<i>Statutory Reference To Insurance Code</i>	<i>Statutory Reference To Exempt Commercial Purchaser</i>
Kentucky (cont'd)	<p>individual company or 200 employees per holding company aggregate at the time the policy of insurance is issued; and</p> <p>(iv) Minimum \$500,000 in annual aggregate insurance premiums in the preceding fiscal year.</p> <p><u>Filing Requirement.</u> All industrial insureds and exempt commercial policyholders must reapply to the Commissioner of Insurance for their respective insured status every three years, on a form the Commissioner of Insurance shall promulgate by administrative regulation.</p> <p>Any industrial insured that filed an affidavit prior to July 1, 1999 which established it satisfied the then-existing criteria for obtaining that status must reapply for their status by filing with the Commissioner of Insurance an "Industrial Insured Affidavit" (Form II-1 P & C) for his approval, certifying that the requirements of §304.11-020(2)(a) continue to be satisfied.</p>		
Louisiana⁽⁵⁾	<p>Meets at least one of the following requirements:</p> <p>1) Insurance procured through full-time insurance manager or buyer;</p> <p>2) Minimum \$25,000 aggregate annual premium on all risks; or</p> <p>3) Minimum 25 employees.</p> <p>Tax of 5% (quarterly). §22:439(B).</p>	§23:1161	<p>Not codified</p> <p>Definition in Bulletin 2011-01 is same as NRRA</p>
Maine⁽²⁾	<p>1) Insurance procured through full-time insurance manager or buyer;</p> <p>2) Minimum \$25,000 aggregate annual premium for insurance on all risks; and</p> <p>3) Minimum 25 full-time employees.</p> <p>3% (quarterly). Title 36, A §2531(2) and (3).</p> <p>§2113(3) was repealed eff. July 21, 2011.</p>	§6701(6)	<p>§ 2003(6); Bulletin 378 (June 17, 2011)</p> <p>Same as NRRA</p>
Maryland	<p>1) Insurance procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant;</p> <p>2) Minimum \$100,000 aggregate annual premiums for insurance on all risks; or</p> <p>3) Minimum 25 full-time employees.</p> <p>3% (semi-annually). §4-210; 4-211(b)(1).</p>	§4-201(a)	<p>§3-301(d); Bulletin 11-26 (September 1, 2011)</p> <p>Same as NRRA</p>
Massachusetts	No.	---	<p>§ 175-168, § 175-224</p> <p>Varies from NRRA</p>

<i>State</i>	<i>Industrial Insured Statutory Requirements</i>	<i>Statutory Reference To Insurance Code</i>	<i>Statutory Reference To Exempt Commercial Purchaser</i>
Massachusetts (cont'd)			“Large Commercial Policyholder” is defined as an insured that has aggregate property and casualty insurance premiums of \$30,000 excluding workers’ compensation, certifies that it has elected to be treated as a Large Commercial Policyholders and meets 2 of the following criteria: (i) net worth of 10M, (ii) net revenue of sales of \$5M, (iii) more than 25 employees per individual company or more than 50 employees per holding company aggregate; (iv) nonprofit or public entity with an annual budget or assets of \$25M or more, (v) is a municipality with a population of 20,000 or more, or (vi) retains a risk manager who shall be a full-time employee or a person retained by the insured who shall either be (a) a certified insurance counselor, (b) a chartered property and casualty underwriter, (c) an associate in risk management, (d) a certified risk manager or (e) a licensed insurance advisor in property and casualty insurance.
Michigan⁽²⁾	1) Insurance procured through full-time insurance manager or buyer; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees.	§500.4601(n)	Not codified
Minnesota	No.	---	§60A.196(e) Same as NRRA
Mississippi	No.	---	§83-21-23(2)(b); Bulletin 2011-1 (April 11, 2011) Same as NRRA
Missouri	1) Insurance (excluding life, health and annuity contracts) procured through full-time insurance manager or buyer, or an insurance producer whose services are wholly compensated by such insured and not by the insurer; 2) Minimum \$100,000 aggregate annual premiums for insurance, excluding workers' compensation premiums; and 3) Minimum 25 full-time employees.	§375.786(1)(8)	§384.015(5); Bulletin 11-05 (July 21, 2011) Same as NRRA
Montana⁽²⁾	1) Insurance procured through full-time	§33-28-101(17)	§33-2-318

<i>State</i>	<i>Industrial Insured Statutory Requirements</i>	<i>Statutory Reference To Insurance Code</i>	<i>Statutory Reference To Exempt Commercial Purchaser</i>
Montana (cont'd)	insurance manager or buyer; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees.		Same as NRRA
Nebraska	No. Repealed when NRRA was enacted.	---	§44-5502(5)(a) Same as NRRA
Nevada⁽⁶⁾	1) Minimum \$1,000,000 aggregate annual property and casualty premiums (not including workers' compensation or industrial insurance); and 2) Minimum 250 full-time employees.	§680A.070(9)	§685A.032, §685A.040 Same as NRRA, except insured may satisfy a condition for exemption if it is a city whose population is over 25,000 or a county whose population is over 20,000.
New Hampshire	1) Insurance (excluding life and annuity contracts) procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant; 2) Minimum \$15,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees. 3% of gross premiums charged. §406-B:16(VI)(a)	§406-B:16 VI	Not codified Definition in Bulletin of August 15, 2011 is the same as NRRA.
New Jersey	(1) who procures the insurance of a risk by use of the services of a full time employee acting as an insurance manager or buyer; (2) who has at least 25 full time employees; and (3) whose aggregate annual premiums for insurance on all risks total at least \$25,000. Subject to taxes specific to captives under §17:47B-12.	§17:47B-1	§ 11:1-33.2, § 11:1-33.3 Same as NRRA
New Mexico	1) Insurance procured through full-time risk or insurance manager, or regularly and continuously qualified insurance consultant; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees. May be subject to tax under §7-40-1 <i>et. seq.</i>	§59A-15-2(B)(5)	§59A-14-2(F) Same as NRRA
New York⁽²⁾	1) Minimum \$100 million net worth; 2) Member of a holding company system having minimum \$100 million net worth; or 3) The metropolitan transportation authority and its statutory subsidiaries; or 4) A city with a population of one million or more. Subject to captive franchise taxes under	§7002(e)	§2101(x)(2) Same as NRRA

<i>State</i>	<i>Industrial Insured Statutory Requirements</i>	<i>Statutory Reference To Insurance Code</i>	<i>Statutory Reference To Exempt Commercial Purchaser</i>
	§7012.		
North Carolina	No.	---	§58-21-16(b)(1) Same as NRRA
North Dakota	1) Insurance (excluding life and annuity contracts) procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees.	§26.1-02-05(9)	§26.1-44-01.1(3) Same as NRRA
Ohio	No	---	§3905.331 Same as NRRA
Oklahoma⁽⁸⁾	No	§6470.2 §4202	36 § 1106.1(B) Same as NRRA
Oregon	No	---	§ 735.405(b) Same as NRRA, except the following standards are relaxed. (A) The person possesses a net worth in excess of \$10 million, as such amount is adjusted pursuant to section 7 of this 2011 Act. [reduced from \$20 million] (B) The person generates annual revenues in excess of \$20 million, as such amount is adjusted pursuant to section 7 of this 2011 Act. [reduced from \$50 million] (C) The person employs more than 50 full-time or full-time equivalent employees for each insured or is a member of an affiliated group employing more than 100 employees in the aggregate. [Reduced from 500 and 1,000 respectively]
Pennsylvania	An “industrial insured” is an insured: 1) Who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant; 2) Whose aggregate annual premiums for insurance on all risks total at least \$25,000; and 3) Who has at least 25 full-time employees.	40 P.S. § 46(e)(6)	40 P.S. § 991.1610 Same as NRRA
Puerto Rico	Subject to certain limited requirements, a	---	26 L.P.R.A. § 1007a-1

<i>State</i>	<i>Industrial Insured Statutory Requirements</i>	<i>Statutory Reference To Insurance Code</i>	<i>Statutory Reference To Exempt Commercial Purchaser</i>
Puerto Rico (cont'd)	surplus lines broker may place coverage for an “exempt commercial purchaser” as defined by the NRRA.		
Rhode Island⁽⁹⁾	1) Insurance procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant; 2) Minimum \$25,000 aggregate annual premiums (excluding workers' compensation and group); and 3) Minimum 25 full-time employees. No information regarding taxes. 1) Insurance procured through full-time insurance manager or buyer; 2) Minimum \$25,000 aggregate annual premiums; and 3) Minimum 25 full-time employees. Subject to taxes specific to captives under §27-43.9	§27-16-1.2(a)(8) §27-43-1(6) (Relates to Captives)	§27-3-38 Same as NRRA
South Carolina⁽⁹⁾	1) Insurance procured through full-time risk or insurance manager, or regularly and continuously qualified insurance consultant; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees.	§38-25-150(8) §38-90-10(16)	§38-45-10, § 38-45-90 Same as NRRA
South Dakota	No.	---	§58-24-68 Varies from NRRA. The term “exempt commercial policyholder” means any person who applies for or procures any kind of property casualty insurance, except title or workers’ compensation insurance, through a risk manager, and meets at least two of the following qualifications. (1) purchased the insurance with aggregate premiums in the sum of at least \$100,000 during the most recent calendar year; (2) minimum \$10,000,000 net worth as reported in most recent financial statement, reviewed or audited by an independent certified public accountant; (3) minimum \$10,000,000 annual net revenues or net sales as reported in most recent financial statement, reviewed or audited by an independent certified public

<i>State</i>	<i>Industrial Insured Statutory Requirements</i>	<i>Statutory Reference To Insurance Code</i>	<i>Statutory Reference To Exempt Commercial Purchaser</i>
South Dakota (cont'd)			<p>accountant;</p> <p>(4) minimum 100 full-time employees, either individually or, if the policyholder is a member of an affiliated group, collectively with all members of the affiliated group;</p> <p>(5) if a nonprofit organization, minimum \$2,500,000 annual operating budget for most recent calendar or fiscal year, whichever applies;</p> <p>(6) if a public entity, minimum \$10,000,000 operating budget for most recent calendar or fiscal year, whichever applies; or</p> <p>(7) if a municipality, minimum 20,000 population.</p>
Tennessee⁽⁹⁾	<p>1) Insurance procured through full-time insurance manager or buyer;</p> <p>2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and</p> <p>3) Minimum 25 full-time employees.</p>	<p>§56-2-105(7)</p> <p>§56-13-102(12)</p>	<p>§56-14-102</p> <p>Same as NRRA</p>
Texas⁽¹¹⁾	<p>“Industrial insured” means a person who purchases commercial insurance and, at the time of placement:</p> <p>(1) Employs or retains a qualified risk manager to negotiate insurance coverage; and</p> <p>(2) either:</p> <p>(A) has paid aggregate nationwide commercial property and casualty insurance premiums of more than \$25,000 in the immediately preceding 12 months; or</p> <p>(B) employs at least 25 full-time employees</p>	<p>§981.0033</p> <p>§981.004</p>	
Utah⁽²⁾	<p>1) Insurance procured through full-time risk manager or insurance manager, or regularly and continuously qualified insurance consultant;</p> <p>2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and</p> <p>3) Minimum 25 full-time employees.</p>	<p>§31A-37-102(16)</p>	<p>Rule R590-171-3, Rule R590-171-6</p> <p>Same as NRRA</p>
Vermont⁽⁹⁾	<p>1) Insurance procured through full-time insurance manager or buyer;</p> <p>2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and</p> <p>3) Minimum 25 full-time employees.</p>	<p>T.8 §3368(a)(6)</p> <p>T.8 §6001(8)</p>	<p>T.8 § 5024; Definition not codified. However, Bulletin 163 references the federal definition as provided in 15 U.S.C. § 8206(5).</p>
U.S. Virgin Islands⁽¹⁰⁾	No.	---	Not codified

<i>State</i>	<i>Industrial Insured Statutory Requirements</i>	<i>Statutory Reference To Insurance Code</i>	<i>Statutory Reference To Exempt Commercial Purchaser</i>
Virginia⁽⁷⁾	1) Insurance procured through full-time insurance manager or buyer or regularly and continuously retained licensed insurance consultant; 2) Minimum \$100,000 aggregate annual premiums for insurance on all risks; (excluding life and annuity and accident and sickness); 3) Minimum 25 full-time employees; and 4) Minimum gross assets in excess of \$3 million or annual gross revenues in excess of \$5 million.	§38.2-1039(D)(5)	Not codified. However, Administrative Letter 2011-4 indicates that the Virginia General Assembly enacted House Bill 2286, which amended various provisions of the Surplus Lines and Insurance Law chapter (§§ 38.2-4800 et seq.) in accordance with provisions of NRRA effective as of July 1, 2011.
Washington	No.	---	§48.15.010 Same as NRRA
West Virginia⁽²⁾	1) Insurance procured through full-time insurance manager or buyer; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees.	§33-31-1(11)	§33-12C-3(f) Same as NRRA
Wisconsin	No	---	Not codified.
Wyoming	1) Insurance procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees.	§26-12-101	§26-11-104(c) Same as NRRA

(1) The Alaska legislature added language to its surplus lines laws in 2009 to extend the commercial policyholder exemption for surplus lines.

(2) “Industrial Insured” exemption recognized with respect to captive insurers only.

(3) “Industrial Insured” exemption recognized with respect to nonadmitted insurers only.

(4) “Industrial Insured” exemption also recognized in limited instances with respect to captive insurers (i.e., directors' and officers' liability insurance and bankers' blanket bonds).

(5) “Industrial Insured” exemption recognized with respect to workers' compensation insurance only.

(6) “Industrial Insured” exemption is restricted to excess liability insurance in excess of \$25,000,000.

(7) “Industrial Insured” exemption only applies to an insured who filed an affidavit to the Executive Director of Insurance prior to July 1, 1999 establishing that it had satisfied the then existing criteria for obtaining that status.

(8) “Industrial Insured” exemption recognized with respect to life insurance only.

(9) “Industrial Insured” exemption also recognized with respect to captive insurers.

⁽¹⁰⁾ “The Industrial Insured” exemption in USVI was repealed in 2008.

⁽¹¹⁾ “Industrial Insured” exemption in Texas only waives the diligent search requirement and only if (1) the agent placing the coverage discloses to the industrial insured that (A) comparable insurance may be available from the admitted market that is subject to more regulatory oversight than the surplus lines market; and (B) a policy purchased in the admitted market may provide greater protection than the surplus lines insurance policy; (2) the surplus lines company offering the coverage has a financial strength rating of A- or better from A.M. Best; and (3) after receiving the notice described in Subd. (1) above, the industrial insured requests in writing that the agent procure the insurance from or place the insurance with an eligible surplus lines insurer.

APPENDIX D

SURPLUS LINES INSURANCE – FREQUENTLY ASKED QUESTIONS

The below presents answers to some “frequently asked questions” by insurance professionals who have a fundamental understanding of excess and surplus lines insurance but seek to understand the nuances of federal and state-specific surplus lines insurance laws.

LAWS APPLICABLE TO THE SURPLUS LINES INSURANCE INDUSTRY

What laws apply to the surplus lines insurance market?

While surplus lines insurers are excused from filing rates and forms, surplus lines insurance policies are not completely exempt from state regulation. For example, many states expressly apply their cancellation and nonrenewal of insurance policy requirements to the surplus lines market. Some states that traditionally prohibit the insurance of punitive damages nevertheless allow surplus lines insurers to assume such risks. Jurisdictions also differ as to whether defense-within-limits clauses and claims-made policy standards apply to the surplus lines market, to name just a few.

Can personal and commercial automobile insurance be written with a surplus lines insurer?

It usually depends on the purpose of the insurance. Most states specifically require that any personal automobile insurance seeking to satisfy the “financial responsibility” requirements of the driver under a state’s applicable motor vehicle laws be offered only by an admitted (licensed) insurer in the state. Many jurisdictions allow for “excess” insurance beyond the financial responsibility layer to be satisfied through the surplus lines market. Moreover, some (but not all) states allow cargo financial responsibility requirements, “Hired and Non-Owned Auto” (HNOA) and other forms of commercial automobile insurance policies to be satisfied through the

surplus lines market, subject to a number of various restrictions and limitations.

In the commercial market, some states permit financial responsibility requirements to be satisfied via a surplus lines policy for certain types of commercial vehicles. As commercial automobile programs become more specialized and incorporate technological platforms (such as car-sharing and peer-to-peer services), traditional financial responsibility laws are being revisited. For example, many states have enacted legislation in the last few years allowing for the financial responsibility requirements of drivers for “transportation network companies” or “TNCs” such as Uber and Lyft to be satisfied through the surplus lines market. However, states differ as to whether commercial automobile programs may satisfy the financial responsibility requirements of their on-duty drivers through the surplus lines market when such states have not otherwise granted express authority to do so, such as in the TNC context.

Does the Terrorism Risk Insurance Act (TRIA) apply to surplus lines policies?

TRIA applies to surplus lines insurance policies and, depending on the nature of the policy, TRIA can even capture insurance coverage issued to non-U.S. individuals with risks residing in the United States. Under TRIA, an insurer is required to “make available” terrorism coverage on certain lines of commercial property and casualty insurance policies. The term “insurer” is defined under TRIA to include all licensed insurers in the U.S. as well as surplus lines insurers. Under TRIA, whether or not an insurer must “make available” terrorism coverage hinges on whether the risk itself is located in the U.S. (or with respect to an U.S. air carrier, flag vessel or at the premises of a U.S. mission), not where the insured resides.

However, depending on the amount of actual risk actually located or otherwise attributable to commercial property and casualty risks in the U.S., federal regulations provide

guidance that small amounts of U.S. risk or commercial P&C exposure in proportion to an insured's global risk are considered "incidental" and not subject to TRIA.

Is policyholder consent required for an insurer to transfer a surplus lines policy to another insurance company?

Most states do not expressly apply their novation, transfer and/or assumption reinsurance consent requirements to the transfer of surplus lines policies as set forth under their applicable insurance codes. However, a number of states still require that the surplus lines insurer abide by the applicable policyholder notification requirements. Moreover, general principles of contract law could nevertheless prohibit the transfer absent consent from the applicable policyholder.

Some states are beginning to enact legislation to expressly allow for "insurance business transfers" of insurance policies between insurance companies applicable to both the admitted and surplus lines markets.

PERMISSIBLE TYPES OF SURPLUS LINES INSURANCE

What lines of insurance may be written by a surplus lines insurer?

It depends on the state. While the Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA) authorizes the placement of property and casualty insurance coverage on a surplus lines basis, a number of states, such as New York, expressly prohibit certain lines of insurance that are viewed as traditional lines of property and casualty insurance in other states from being exported to the nonadmitted market, such as financial guaranty insurance.

Some states expressly allow for disability insurance to be written on a surplus lines basis, while others only allow narrow forms of "high limit" disability products to be exported. Workers' compensation insurance is also treated differently among the various states.

There has been a push by the National Association of Insurance Commissioners (NAIC) in recent years to enact model legislation allowing for limited forms of accident and health insurance (including short term medical, international medical and excess disability) to be written on a surplus lines basis. A number of states have already enacted laws allowing for certain types of accident and health insurance to be written through the nonadmitted market. A select number of states have no restrictions

whatsoever on the lines of insurance business that may be written on a surplus lines basis.

If a state only allows for surplus lines insurance policies to provide property and casualty coverage, can the policy provide "ancillary" non-P&C coverage under a multi-peril insurance product?

While a handful of such states in practice allow flexibility as to the issuance of non-property and casualty insurance coverage on a surplus lines basis, the general answer is no. For example, a travel insurance policy that offers to reimburse the insured for medical costs incurred while the insured is on a trip provides the insured a form of health insurance coverage that may not be offered through the surplus lines market in many states.

FILINGS, TAXES AND FEES

What policy filings are required?

While surplus lines insurers are generally exempt from the rate and form filing requirements applicable to licensed insurance companies, most states that have surplus lines associations require filing of the surplus lines policy, and some of these associations may decline to "stamp" the policy (i.e., acknowledge the policy is acceptable under the state's surplus lines laws and charge a stamping fee in connection therewith) if it offers insurance coverage in contravention of applicable law. Moreover, states that maintain stamping offices often levy a fee to stamp the policy.

At least one jurisdiction (New York) also requires the filing of surplus lines producer agreements with insurance carriers that grant the surplus lines broker binding authority as well, and the Excess Line Association of New York encourages specific language be utilized in such agreements.

Who is responsible for the payment of surplus lines premium taxes?

Traditionally, the surplus lines broker is legally responsible for the payment of surplus lines premium taxes, but some states hold the insured and/or the surplus lines insurer also liable for such taxes if the broker does not satisfy its legal obligation.

Most states allow the surplus lines broker to pass the tax on to the insured. However, some states treat the payment by the insured of the surplus lines premium tax as an additional "fee" levied on the insured, and consequently that the broker obtain a written acknowledgment from the insured that its

payment of the tax is in addition to the premium under the insured's insurance policy.

Where are surplus lines premium taxes paid on group insurance policies?

The NRRA requires that all surplus lines premium taxes be paid to the "home state" of the insured. Under the NRRA, the home state of an affiliated group is the state of the member of the group that has the largest percentage of premiums attributed to it. An "affiliated group" is comprised of entities that are under common control.

While the NRRA addresses how to treat group policies where all insureds are affiliated, the NRRA is silent as to determining the home state of nonaffiliated groups. As a result, many states take the position that every certificate issued is its own policy and the certificate holder/member's domiciliary state is considered the "home state" for each such certificate and require surplus lines premium tax be remitted accordingly. This rule is expressly codified in many U.S. jurisdictions with respect to surplus lines group policies issued through risk purchasing groups (RPGs) as well.

Can surplus lines brokers charge clients fees other than the premium set forth in the insurance policy?

It depends on the jurisdiction. Some states expressly prohibit all forms of broker fees, whether charged on admitted or surplus lines placements. Other states provide more leniency as to the surplus lines market in particular. For example, Florida prohibits most types of broker fees charged on admitted insurance policies but amended its surplus lines laws in 2019 to specifically allow for the charging of "reasonable" broker fees on surplus lines insurance policies. Other states only allow specific kinds of surplus lines broker fees, such as fees on commercial insurance policies or fees meant to reimburse the costs of the surplus lines broker.

Nearly all states that allow for surplus lines broker fees require that the insured provide its written consent prior to being charged such fee, and some states require that such written consent also disclose to the insured how the fee was computed and the various sources of the surplus lines broker's compensation.

DILIGENT SEARCH REQUIREMENT

How is the diligent search requirement satisfied?

Assuming no exemption is available to a surplus lines broker or its retail insurance broker partner (such as a listing on the export list or insurance issued to an exempt commercial purchaser), most states require three (3) declinations to be obtained from admitted insurance companies prior to placing the risk in the surplus lines market, but this is not uniform throughout the country. For example, in Maine, under Bulletin 439 (November 26, 2019) "doing a specific number of inquiries does not mean that the producer has fulfilled this requirement." By contrast, a few states (e.g., Louisiana) have eliminated the diligent search requirement altogether.

Some states require that evidence of the procurement of declinations simply be maintained in the offices of the surplus lines broker; whereas, others require that affidavits be filed with the applicable insurance department or surplus lines stamping office. A number of states expressly require the diligent search to be repeated each time a policy is renewed.

Does the diligent search need to be performed on a per-risk [insured] basis?

Usually, yes. Some states have narrow exceptions in some instances, particularly in the group policy context. For example, some states allow professional liability coverage written on a group basis through an RPG to satisfy the diligent search requirement one time in that state for all members of the RPG residing in that state during a given time period. By contrast, many states require that the diligent search be completed as to each certificate holder under a non-RPG group policy.

The diligent search need not be completed if an exception from the diligent search requirement applies. For example, if the insured meets the definition of an "exempt commercial purchaser" as set forth under the NRRA or qualifies as an "industrial insured" under the laws of various states, the diligent search need not be satisfied. Moreover, a number of states promulgate "export lists" which expressly exempt certain lines of insurance from the diligent search requirement, and such states often solicit recommendations from the industry on an annual basis for considering the addition of new, emerging lines of insurance coverage.

What qualifies as a permissible declination?

Many states expressly disallow price to be the sole factor for obtaining a declination, i.e., exporting to the nonadmitted market simply because it offers more favorable rates than the admitted market will not suffice. Moreover, some states do not recognize a declination with respect to a multi-peril policy where components of such policy could be written by the admitted market (and some states, like California, only

allow exportation in such case if commissioner approval is granted). In addition, most states do not recognize declinations obtained from an insurer that is an affiliate of another insurer from whom a declination was obtained, and some states do not allow the placement of surplus lines insurance with a nonadmitted insurer that is an affiliate of an admitted insurer from which a declination has been obtained.

ELIGIBILITY, MARKETING AND PERMISSIBLE ACTIVITIES

How does an alien (non-U.S.) insurance company become eligible to write surplus lines insurance in the United States and what is a domestic surplus lines insurer?

Alien (non-U.S.) insurance companies can write surplus lines business across the United States if they are listed on the Quarterly Listing of Alien Insurers (Quarterly List) as maintained by the NAIC which requires, among other things, an application to be submitted thereto and the establishment of a trust fund as security for U.S. policyholders. The information as reported to the NAIC must be updated on an annual basis. In addition, most alien insurers obtain listing on the eligibility lists or “White Lists” of the states that continue to maintain such lists in order to signal to the market that the insurance carrier is approved by the state. The Quarterly List and White List filings and associated U.S. trust obligations are often maintained for alien insurers by U.S. regulatory counsel or other U.S.-based representatives who often act as agent for service of process as well.

Another increasingly-used method of entering the surplus lines market is through the establishment of a “domestic surplus lines insurer” that is formed in a state solely for the purpose of writing surplus lines coverage nationwide. This strategy obviates the need to utilize two separate carriers to write surplus lines coverage in every U.S. jurisdiction (because traditional “admitted” companies cannot write surplus lines coverage in their home states). Currently, 21 states have adopted domestic surplus lines legislation.

What activities can be conducted by a surplus lines insurer in a state?

While all states require surplus lines insurance to be placed through a surplus lines broker, some U.S. jurisdictions expressly restrict the presence of a surplus lines insurer or its employees within its borders. For example, California takes the view that while only the surplus lines broker may have a physical presence in the

state with respect to surplus lines transactions, domestic insurance companies affiliated with the surplus lines insurer may perform certain administrative functions unrelated to underwriting on behalf of the surplus lines insurer. All managerial and underwriting decisions must be conducted outside the state. Other jurisdictions, such as New York, have adopted broad exceptions permitting licensed affiliates of surplus lines insurers to conduct certain functions on behalf of their surplus lines insurer affiliate in the state.

In addition, depending on the state, surplus lines insurers may not always take advantage of various exceptions to licensing laws that are often available to admitted insurance companies, such as exemptions from adjuster licensing requirements applicable to authorized insurers or their employees in many states.

What marketing activities can be conducted by surplus lines insurers and brokers?

While the majority of the states do not expressly address marketing activities in the surplus lines space, a number of large states restrict marketing unauthorized products. For example, California and New York have issued guidance generally prohibiting the marketing of surplus lines products unless stringent standards are met, including the prohibition on targeted solicitation, restrictions on dissemination of certain policy terms, prohibiting the naming of the unauthorized insurer (subject to exceptions), and requiring disclaimers that the insurer is not licensed in the state and that the insurance product may not be available in all states.

Does an individual P&C insurance producer also need a surplus lines broker license to place insurance on behalf of a surplus lines agency? What if the individual acts as a retail producer for a wholesale surplus lines broker?

When an individual employee places coverage on behalf of his or her surplus lines brokerage firm, the individual must hold a surplus lines broker license; a property and casualty license alone is not sufficient. However, states permit a licensed property and casualty producer that does not hold a surplus lines license to act in a retail broker capacity when facilitating a transaction through a licensed surplus lines broker.

In addition, many states allow the retail broker to conduct the diligent search of the admitted market, although states differ as to whether the retail broker or the wholesale surplus lines broker must keep evidence of, and execute affidavits relating to, the satisfaction of the diligent search requirement.

Can surplus lines brokers place insurance policies with ineligible unauthorized insurers on a direct procurement basis?

Surplus lines brokers in the home state of the insured are generally prohibited from assisting insureds with respect to the “direct procurement” (also known as “independent procurement” or “direct placement”) of insurance coverage with unauthorized insurers. Most states require that a prospective insured leave its home state and obtain insurance coverage directly from the unauthorized insurance company (or through a non-domiciliary broker) in a jurisdiction where the insurance carrier is authorized.

However, some states allow brokers to act on behalf of their insureds and physically leave the state to procure the desired insurance coverage, provided that the broker abides by the governing tenets of direct procurement as if it were itself the insured.

FINES AND PENALTIES; INDUSTRY TRENDS

Which individual or entity bears responsibility for violations of surplus lines law?

Traditionally, the surplus lines broker (and the designated responsible licensed producer of a surplus lines brokerage firm) is most exposed to fines and penalties for violations of applicable surplus lines laws. However, a number of states have enacted statutes allowing insurance departments to inspect the books and records of unauthorized insurers. In addition, there have been a few instances in recent years where states have issued consent orders levying fines and penalties against surplus lines producers, insurers, and even insureds (particularly in the group policy context where master policyholders, such as associations, market surplus lines insurance products).

What is “InsurTech” and how does it impact the surplus lines industry?

The term “InsurTech” refers to the wave of technological innovation impacting the insurance industry, including the manner in which insurance is sold and administered to the types of risks for which insurance policies have evolved to provide coverage.

The surplus lines industry both benefits and suffers from the emergence of “InsurTech”. The utilization of dynamic pricing models and other algorithmic underwriting guidelines takes time to work its way through the admitted market process of rate and form approval, which is bypassed by surplus lines insurers. However, surplus lines products must be obtained through surplus lines brokers, which restricts direct-to-consumer transactions. Moreover, surplus lines brokers must conduct a diligent search of the admitted market (absent an exception), which hinders the ability to quickly bind surplus lines coverages through the internet or app-based products.

APPENDIX E

NAIC INTERNATIONAL INSURERS DEPARTMENT (IID)

PLAN OF OPERATION (APPROVED BY EXECUTIVE/PLENARY ON MARCH 27, 2018)

Note

At its Spring National Meeting on March 24-27, 2018, the NAIC formally approved changes to the International Insurers Department's (IID) Plan of Operation ("Plan of Operation"), which includes requirements and guidelines for inclusion of non-U.S. insurers (also known as "alien insurers") on the IID's Quarterly Listing of Alien Insurers (the "Quarterly Listing"). The reason for the re-write of the Plan of Operation (which was last revised in 2012) is to freshen the language, add more concise statements and arrange materials in a more logical order. An additional purpose is to call attention to the OPTins online system now being used by the NAIC for automatic storage of application and renewal uploads.

The most noteworthy changes to the Plan of Operation are: (1) an increase of the "soft cap" on the minimum required funding amount for trusts held by IID listed insurers to \$250 million (previously set at \$150 million); (2) the retention of the NAIC Property & Casualty (C) Committee as the designated Appeal Committee for initial application denials, de-listing decisions and trust fund levels and clarification that such appeals will be considered at a closed door Appeal Committee meeting with a representative of the Surplus Lines Working Group and appealing entity allowed to be present; (3) the creation of a timeline for filing a new application, i.e., no less than 90 days prior to when the applicant company wants to be added to the Quarterly Listing; (4) the elimination of the description of a "qualified U.S. financial institution" as one that "has been determined by the Securities Valuation Office of the NAIC as an acceptable financial institution"; and (5) the adoption of two new sections to the Plan of Operation dealing with the description of how the IID handles confidential

information and how the Plan of Operation can be amended going forward. The complete text of the IID Plan of Operation as currently amended is reprinted in its entirety below with the permission of the National Association of Insurance Commissioners ("NAIC").

Background

The NAIC has a long history of supporting state insurance departments' regulatory efforts regarding insurers domiciled outside of the United States (alien) participating in the U.S. non-admitted market. Initially acting only as a repository for alien insurer financial records, the NAIC has transitioned over the years to its present role as the recognized authority for alien insurers (hereafter, Insurer(s) refers to alien domiciled companies and Lloyd's syndicates) seeking approval to write surplus lines business in all U.S. states and territories. The International Insurers Department Plan of Operation (Plan) details the standards and processes which Insurers must meet in order to gain and maintain inclusion on the *Quarterly Listing of Alien Insurers* (Quarterly Listing). The Plan that follows provides a description of the roles NAIC staff and selected state regulators perform in the oversight of alien surplus lines insurers.

Introduction

The Plan describes how the NAIC's IID will operate and how Insurers obtain inclusion on the Quarterly Listing. The IID is composed of experienced financial analysts who review applications and renewal filing documents, prepare written analyses, and provide support to NAIC surplus lines committees and working groups. The IID also includes an Internal Review Committee (Internal Committee) that consists of NAIC directors, managers,

¹15 U.S.C. § 8204(2).

attorneys, and analysts. The Internal Committee reviews IID analyses and provides a report of recommendation to the Surplus Lines (C) Working Group (Working Group). The Property and Casualty Insurance (C) Committee has no direct involvement in making or approving recommendations regarding alien surplus lines insurers and is designated the “Appeal Committee” for decisions made by the Working Group.

The IID functions on behalf of state departments of insurance by maintaining qualifying standards for Insurers domiciled outside of the U.S. seeking eligibility to write direct surplus lines. Section 524(2)¹ of the 2010 Dodd-Frank Wall Street and Consumer Protection Act recognizes the Quarterly Listing as identifying Insurers for which states may not prohibit brokers from placing or procuring non-admitted insurance in the U.S. The Quarterly Listing is a public document that is posted on the Products page of the NAIC website. This list includes Insurers that qualify for listing as outlined in *Section II – Core Requirements and Guidelines for Inclusion on the Quarterly Listing*. Modifications to listed companies are summarized within each Quarterly Listing. The Working Group will make the final determination of all Insurer eligibility.

The Working Group provides oversight to the IID and reports to the Surplus Lines (C) Task Force (Task Force), which functions under the NAIC Property and Casualty Insurance (C) Committee. The Working Group is composed of state regulators with experience in financial analysis and surplus lines regulation. The Working Group provides the IID with guidance and expertise relative to applications and renewals as well as regulatory policy and practices with respect to Insurers listed on or seeking inclusion on the Quarterly Listing.

I Application Process

An Insurer planning to write U.S. surplus lines and requesting inclusion on the Quarterly Listing will first register at OPTins®. OPTins® is an electronic filing and payment system designed for surplus lines. Following registration, an Insurer will complete and upload an application and all other documents indicated as required for listing. Additionally, a comprehensive list of required filings can be found within the “Related Documents” tab available on the Working Group webpage. Also through

OPTins®, the applicant will remit a non-refundable electronic payment in the amount indicated in the Schedule of Fees, a separate document found on the Working Group’s webpage and within OPTins®. The fee is used to cover the cost of processing and evaluating the Insurer’s request for inclusion on the Quarterly Listing. At the time the application is submitted, the Insurer agrees to provide additional information as may be requested by the IID. The IID will contact the applicant’s domiciliary regulator to inquire about the Insurer’s current standing.

The IID will review and evaluate the information submitted by Insurers requesting inclusion on the Quarterly Listing. The IID evaluates whether the Insurer meets or does not meet the standards set forth in *Section II - Core Requirements and Guidelines for Inclusion on the Quarterly Listing* and will present the application to the Internal Committee to determine a recommendation. The Internal Committee’s recommendation will be presented to the Working Group for consideration. Following determination by the Working Group, a letter detailing approval or denial will be sent to the Insurer. Subsequently, if approved, the IID will include the Insurer in the next Quarterly Listing.

The Quarterly Listing is published on January 1st, April 1st, July 1st, and October 1st. A complete application must be received no fewer than 90 days in advance of the publication date in which the Insurer applies to be listed. If the application is received fewer than 90 days prior to the intended publication date, it will not be considered until the following quarterly publication release. The IID will provide notice to an applicant of the application determination a minimum of ten calendar days in advance of the intended listing date.

The IID reserves the right to ask questions, make comments, or seek clarification of any concerns during its review of Insurer applications. If all questions and/or concerns (e.g., receipt of required documents and IID requested explanations and supporting documentation) are not resolved within a six-month period of the initial application submission date, the application will be rejected and a letter informing the Insurer of the decision will be issued. Refer to *Section III - Process for Reconsideration of an Application Rejection*. All application fees are non-refundable.

II Core Requirements and Guidelines for Inclusion of the Quarterly Listing

A. Shareholders' Equity Funds (See Lloyd's Notation below)

A minimum shareholders' equity amount of \$45.0 million must be maintained on a continuous basis. During the course of an IID analysis, it will be evaluated whether shareholders' equity is adequate given the risk profile. In the evaluation of the adequacy of shareholders' equity, the following key factors may be considered by the IID:

- Operating history and trends;
- Quality and diversification of assets;
- Mix of business and geographic diversification;
- Gross insurance leverage;
- Reinsurance program and quality of reinsurers;
- Gross reserve leverage;
- Liquidity;
- Dividend history; and,
- Other relevant factors

If there is a determination that shareholders' equity is inadequate based on the analysis of the risk profile, equity above the minimum amount of \$45.0 million may be required.

Lloyd's Notation

In lieu of individual shareholders' equity, Lloyd's syndicates are required to report a U.S. trust fund of not less than \$100.0 million available for the benefit of all Lloyd's U.S. surplus lines policyholders.

B. U.S. Trust Account

The purpose for establishing a trust fund is to provide additional assurance that U.S. policyholders are secure. The trust fund must consist of cash deposited with the trustee, securities, or an acceptable letter of credit on behalf of U.S. policyholders at an appropriate level. With regard to the composition of the trust fund, credit will be allowed only for securities readily marketable on a regulated U.S. securities exchange or those securities designated by the NAIC's Securities Valuation Office. An acceptable letter of credit is defined as clean, unconditional, irrevocable, and issued or confirmed by a qualified U.S. financial institution.

In establishing its trust fund, an insurance company must maintain such fund at, and enter into an agreement with, a

qualified U.S. financial institution. The agreement must contain provisions consistent with the IID model document, Trust Agreement for Alien Excess or Surplus Lines Insurers. In no case may a trust agreement have an expiration date of less than five years from the date the Insurer notifies the trustee of its intention to terminate the trust fund. For purposes of complying with the trust fund requirement as well as the Lloyd's United States Situs Excess or Surplus Lines Trust Deed, a qualified U.S. financial institution:

- Is organized or (in the case of a U.S. office of a foreign banking organization) licensed under the laws of the U.S. or any state thereof;
- A national bank, state bank, or trust company which is adequately capitalized and qualified to accept securities as determined by the standards adopted by the U.S. banking regulators and regulated by state banking laws or a member of the Federal Reserve system; and
- Has been granted authority to operate with trust powers, if such qualified U.S. financial institution is to act as the fiduciary of the trust fund.

Determining the Trust Fund Level

In the case of an insurance company, for business written on or after January 1, 1998, the trust fund minimum amount will be based on the U.S. gross surplus lines liabilities or the direct non-admitted U.S. liabilities excluding liabilities arising from aviation, ocean marine and transportation insurance, and direct placements as follows:

Trust Fund Calculation

- 30% of any amount up to the first \$200.0 million, plus
- 25% of any amount up to the next \$300.0 million, plus
- 20% of any amount up to the next \$500.0 million, plus
- 15% of any amount in excess of \$1.0 billion

In no event will the required trust fund minimum amount, despite the calculation above, be less than \$5.4 million or in excess of \$250 million.

As described above, the liabilities will be determined no less than annually and reported to the trustee and the IID no later than June 30th of each year. The actuary who

opines on the liabilities must be a member of a recognized professional actuarial body.

In the case of Lloyd's syndicates, for the total of all years of account, the trust fund minimum amount for each syndicate will be based on the syndicate's gross U.S. surplus lines liabilities using the Trust Fund Calculation above.

In extenuating situations (e.g., potential legal action on exposures not yet included within gross loss reserves) there may be a need to require a trust fund balance that is greater than the normal trust fund calculation based on the Insurer's risk profile. The IID will consider the following factors in determining an appropriate trust fund level:

- The types and amounts of coverage which the Insurer writes or proposes to write in the U.S.;
- The valuation of the assets that compose the trust fund may be adjusted for any questionable balances; and,
- The terms and conditions as outlined within the trust agreement.

Process for Reconsideration of a Trust Fund Level

In the event of a determination that a trust fund balance greater than the calculated minimum level is appropriate, a written request for reconsideration may be submitted if the Insurer objects to the determination. In order to request reconsideration, all the following criteria must be met:

- The request must be received by the IID within 30 days of the date on the trust fund adjustment letter;
- The request must be in letter format and signed by an officer of the Insurer; and,
- The request must include a comprehensive rationale for disagreement with regard to the determined trust fund level.

The IID will evaluate the appeal with consideration given to the information provided within the request letter and all such information will be presented to the Working Group to determine a recommendation. The Working Group's recommendation will then be presented at a regulator-only Appeal Committee meeting for consideration. A representative of the Working Group and the Insurer will be allowed to present. Following review and a determination by the Appeal Committee, the IID

will be instructed to send to the Insured a letter detailing approval or denial of the request.

C. Ethics and Integrity

Insurer management will have a proven and demonstrable track record of relevant experience, competence, and integrity. Biographical affidavits will be considered as one source for assessing the presence of these attributes.

D. U.S. Branch Office

An Insurer formed with an existing U.S. branch office is prohibited from applying for inclusion on the Quarterly Listing, and Insurers currently included on the Quarterly Listing will be de-listed if a U.S. branch office is established.

E. Lloyd's Incidental Syndicates

A Lloyd's incidental syndicate is formed as a portion of the host syndicate. The incidental syndicate is subject to the same capital setting and business plan as the host syndicate. Lloyd's incidental syndicates are permitted to apply for inclusion on the Quarterly Listing under the condition that they establish a separate Lloyd's U.S. Situs Excess or Surplus Lines Trust Deed and commit to annual reporting under its incidental syndicate number.

III Process for Reconsideration of an Application Rejection

In the event of rejection, a written request for reconsideration may be submitted if the Insurer objects to the determination. In order to request reconsideration, all the following criteria must be met:

- The request must be received by the IID within 30 days of the date on the rejection letter;
- The request must be in letter format and signed by an officer of the Insurer; and,
- Each of the rejection letter issues must be addressed with detailed explanations and supporting documentation.

The IID will re-evaluate the application with consideration given to the information provided within the request letter and all such information will be presented to the Working Group to determine a recommendation. The Working Group's recommendation will be presented at a regulator-only Appeal Committee meeting for consideration. A representative of the Working Group and the rejected applicant will be allowed to present.

Following review and a determination by the Appeal Committee, the IID will be instructed to send to the Insurer a letter detailing approval or denial of the request.

If an Insurer does not submit a reconsideration letter within 30 days of the date on the rejection letter, any request for reconsideration is considered waived and the Insurer will be required to submit a new application along with the appropriate fee and all required supporting documentation.

IV Ongoing Quarterly Listing Eligibility

Insurers included on the Quarterly Listing are subject to ongoing review, which includes annual and interim compliance and qualitative and quantitative analysis.

A. Core Areas of Insurer Compliance

Annual Renewal Filing

All listed Insurers are required to file an annual renewal package and must upload all required renewal filing documents to OPTins® by June 30th. A comprehensive list of required filings can be found within the “Related Documents” tab available on the Working Group webpage. Filings submitted subsequent to June 30th will be subject to late fees as defined within the Schedule of Fees on the NAIC website. If an Insurer fails to submit its annual renewal filing by July 31st, it will be subject to de-listing.

Change of Control and/or Merger of Insurer

In the event of a change of control and/or merger, the Insurer must provide notice 15 days prior to the effective date of the transaction. The Insurer must reapply within 45 days following the effective date of the change of control and/or merger of the Insurer in order to maintain its listing. Failure to provide timely notice and/or re-application may result in de-listing and/or late fees as defined within the Schedule of Fees.

Decline in Equity (Does not apply to Lloyd’s Syndicates)

If an Insurer’s equity has declined or is expected to decline by 10% or greater compared to the most recent annual filing, it must notify the IID immediately. If shareholders’ equity has dropped below the minimum standard described in *Section II.A - Shareholders’ Equity Funds*, the Insurer must immediately inform the IID. Failure to provide timely notice will result in late fees, as defined within the Schedule of Fees. If an Insurer is

unable to increase equity to the required level within 15 business days, it will be subject to de-listing.

Trust Fund Monitoring

An Insurer is required to monitor the trust fund balance to ensure that it meets the minimum amount and takes market fluctuations into consideration. The IID will periodically review the market value of each Insurer’s U.S. trust fund in order to ensure that it continues to meet the required minimum balance.

B. IID Annual and Ongoing Analysis of Quarterly Listed Insurers

The IID analyzes submitted filing documents on an annual and ongoing basis. The IID may request additional information as a result of the analysis. If an Insurer fails to file all additional requested information within the specified timeframe, it may be subject to de-listing. Following the overall analysis process, the Insurer will be recommended to the Working Group for renewal or de-listing. Following review and a determination by the Working Group, a letter will be sent to the Insurer.

C. Examination of Insurer

The IID may recommend that an insurer submit to a special examination of its affairs to verify continuing compliance. If the Working Group approves the recommendation, the insurer will agree to submit to a special examination and pay all expenses or will be de-listed.

V De-listing

The IID will review and evaluate information obtained from, but not limited to, industry sources, rating agencies, insurer websites and notices regarding equity depletion, annual renewal filing documents, and trust fund levels. When the IID determines an Insurer is not in compliance with the Plan or the trust fund and/or poses solvency concerns, the IID may present the Insurer to the Internal Committee to determine a de-listing recommendation. The Internal Committee’s recommendation will be presented to the Working Group. Upon determination of non-compliance and/or solvency concerns by the Working Group, the Insurer will be de-listed and notified via letter.

VI Process of Reconsideration of De-listing

In the event of de-listing, a written request for reconsideration may be submitted if the Insurer elects to

challenge the determination. In order to request reconsideration, all the following criteria must be met:

- The request must be received by the IID within 30 days of the date on the de-listing letter; The request must be in letter format and signed by an officer of the Insurer; and,
- Each of the de-listing letter issues must be addressed with detailed explanations and supporting documentation

The IID will review the letter response and will present its evaluation to the Working Group for its recommendation. The Working Group's recommendation will be presented at a regulator-only Appeal Committee meeting for consideration. A representative of the Working Group and the de-listed insurer will be allowed to present. Following review and a determination by the Appeal Committee, the IID will be instructed to send to the Insurer a letter detailing approval or denial of the request.

If an Insurer does not submit a reconsideration letter within 30 days of the date on the de-listing letter, any request for reconsideration is considered waived and the Insurer will be required to submit a new application along with the appropriate fee and all required supporting documentation, to be readmitted to the Quarterly Listing.

VII Communication

All communication and information, including financial statements, audit reports, trust fund documents, and other supporting documentation must be submitted in English.

VIII Confidentiality

The IID will treat as confidential any non-public information submitted by an Insurer and for which confidential treatment is clearly requested. The IID is not aware of any state or federal statutes that provide additional protection for information submitted to it. By submitting information to the IID, the Insurer acknowledges that the IID may share any such information with any state insurance department as well as other NAIC staff members who participate in the review of applications. Additionally, in the event the IID or NAIC is served with a subpoena, motion, order, or other legal process requiring the production of such information or testimony related thereto, the NAIC will make best efforts to inform the Insurer of such third-party request in order to afford the Insurer an opportunity to take whatever action it deems appropriate to protect the confidentiality

of its information. The Insurer acknowledges the NAIC may comply with the request and any order compelling compliance with such request.

IX Amendment to the Plan

The Working Group will consider relevant proposals submitted to IID for modifications to the Plan. All proposals will be considered during open conference calls or meetings of the Working Group throughout the year. The proposal must be complete and concise and include any relevant supporting documents. Proposals exposed and adopted by the Working Group would become effective following adoption by the Surplus Lines (C) Task Force during its next scheduled meeting. For complete details regarding the amendment process, refer to the Working Group's webpage.

REGULATORY AND TRANSACTIONAL DEPARTMENT PROFILE

Locke Lord LLP is a full-service, international law firm that ranks among The American Lawyer's top U.S. law firms. Our team has earned a solid reputation in complex litigation, regulatory and transactional work. We serve our clients' interests first, and these clients range from Fortune 500 and middle market public and private companies to start-ups and emerging businesses. Through its wide-ranging international footprint, Locke Lord has received numerous industry recognitions as a global leader in the middle market sector.

Locke Lord's team builds collaborative relationships and crafts creative solutions to solve problems - all designed and executed with long-term strategic goals in mind. Among Locke Lord's many strong practice areas are appellate, aviation, bankruptcy/restructuring/insolvency, business litigation and dispute resolution, class action litigation, consumer finance, corporate and finance transactions, employee benefits, energy, environmental, financial services, fund formation, health care and life sciences, insurance and reinsurance, intellectual property, international, labor and employment, mergers and acquisitions, privacy and cyber security, private equity, public finance, public law, real estate, regulatory, REIT, tax, technology, telecommunications, venture capital, and white collar criminal defense and internal investigations.

As part of a full service firm, our Regulatory and Transactional Department represents international and domestic clients before the National Association of Insurance Commissioners (NAIC), the National Conference of Insurance Legislators (NCOIL) and the Insurance Departments of the various states. We participate in the periodic meetings of the

NAIC and NCOIL, and serve on a multitude of advisory and other committees established to address critical issues confronting the insurance industry and its individual clients. Through our working relationship with these regulators, our Regulatory and Transactional Department is well equipped to recognize, address and resolve various regulatory issues as they arise. Accordingly, our Regulatory and Transactional Department plays an active role in the crafting of insurance legislation and monitors, on a daily basis, the ever-changing laws, rules and regulations which govern our industry.

For further information on Locke Lord LLP's Regulatory and Transactional Department, and Excess and Surplus Lines matters in particular, please contact:

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