STATE OF WEST VIRGINIA

OFFICES OF THE
INSURANCE COMMISSIONER
2100 WASHINGTON STREET, EAST
CHARLESTON, WEST VIRGINIA 25305
TELEPHONE (304) 348-3386

RICHARD G. SHAW
INSURANCE COMMISSIONER

JOHN D. ROCKEFELLER, IV
GOVERNOR

STATE REGISTER FILING

I, Richard G. Shaw, Commissioner,
Title or Position

Insurance, hereby submit to record in
Department or Division

the State Register on 8½ x 11" paper two (2) copies of

(X) proposed rules and regulations concerning topics of material not covered by existing rules and regulations;

( ) proposed rules and regulations superseding rules and regulations already on file;

( ) notice of hearing;

( ) findings and determinations;

( ) rules and regulations; or

(X) other - specify (Notice of Approval of Legislative Rule; Letter, of Submission of Legislative Rule to Legislative Rule-Making Review Committee Including Fiscal Note)

This filing pertains to

Chapter 33
Article 12
Series -
Section -
Page No. -

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 10/18/83
Administrative Law Division

(X) proposed rules and regulations are required to go to Legislative Rule Making Committee;

( ) proposed rules and regulations are excluded from Legislative Rule Making Committee;

October 18, 1983
Date Submitted

Signature of Person Authorizing this Filing

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JOHN D. ROCKEFELLER, IV
GOVERNOR

October 18, 1983

Honorable A. James Manchin
Secretary of State
State of West Virginia
State Capitol
Charleston, WV 25305

Re: Notice of Approval of Legislative Rule;
Insurance Commissioner of the State of
West Virginia, Series XX,
Excess Line Brokers (1984)

Dear Secretary Manchin:

In accordance with the provisions of West Virginia Code § 29A-3-9, notice is hereby given of approval by the Insurance Commissioner of the State of West Virginia of the above-noted legislative rule for submission to the 1984 regular session of the West Virginia legislature.

Respectfully,

Richard G. Shaw,
Insurance Commissioner

EGS:amp

cc: Legislative Rule-Making Review Committee
c/o West Virginia Legislative Services
Room E-132
State Capitol
Charleston, WV 25305

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Legislative Rule-Making Review Committee
c/o West Virginia Legislative Services
Room E-132
State Capitol
Charleston, WV 25305

Re: Submission of Legislative Rule of the Insurance Commissioner, Series XX, Excess Line Brokers (1984), Including Fiscal Note

Dear Committee Members:

Pursuant to West Virginia Code § 29A-3-11(a), I hereby submit the above-noted legislative rule to the Legislative Rule-Making Review Committee and respectfully request that the Committee recommend promulgation of such rule by the 1984 regular session of the West Virginia Legislature. The required fiscal note is incorporated in this letter. Additionally, a copy of the notice of approval of the legislative rule as filed in the State Register is attached.

The objective of this legislative rule is to more fully develop certain provisions of the West Virginia Code in regard to the licensing and regulation of excess line brokers. An excess line broker is essentially a sophisticated type of insurance agent who specializes in placing insurance coverage for more complex risks, e.g. a coal mining operation. Excess line brokers may place coverage with an insurance company not admitted to transact insurance in West Virginia, in contrast with a standard insurance agent who may place coverage only with an admitted insurer. When an excess line broker places coverage with a non-admitted company, he must assume certain responsibilities typically assumed by the insurer in an insurance transaction, e.g. payment of premium taxes.

The sophisticated nature of the excess line market and concomitant responsibilities imposed upon the excess line broker necessitate elaboration of the present Code provisions governing licensing and operations of excess line brokers. The proposed legislative rule addresses three major areas: standards for licensing including imposition of an examination requirement; standards for placing coverage with a non-admitted insurer; and, requirements for reporting and payment of premium taxes.

The rule as filed with the West Virginia Secretary of State on June 9, 1983, has generated no opposition, either prior to, during or subsequent to the July 26, 1983, public hearing. Accordingly, only three minor changes have been made in the proposed rule: (1) the effective date has been changed from 1983 to 1984 in order to accommodate legislative review; (2) the word "on" in § 2.06 has been changed to "or" to correct a typographical error; and, (3) the language of the second sentence of § 3.01(c) has been clarified.

To the best of my knowledge and belief, promulgation of this rule would result in no direct costs to, and have no economic impact on, the residents of West Virginia. Further, present and prospective excess line brokers would incur little, if any, expense as a consequence of the proposed rule.

The cost to the State, and its executive agency of the Insurance Department, in implementing this proposed rule is as follows:

Hearing Examiner's Fee	$ 35.00
Court Reporter	90.75
Mailing Expenses - Rule (estimated)	25.00
Copying Expenses - Rule (estimated)	80.00
Preparation and Printing of Examination (estimated)	100.00
Initial Printing of Forms (estimated)	50.00
TOTAL	$380.75

Additionally, an undetermined number of personnel work hours has been involved in implementation and promulgation of the proposed rule.

If you have any questions concerning this matter, please contact me.

Respectfully,

Richard G. Shaw,
Insurance Commissioner

RGS:amp
Enclosures

EXCESS LINE BROKERS

Chapter 33-12
Series XX
1984

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 10/18/83
Administrative Law Division

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APPENDIX

Exhibit A

WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER OF WEST VIRGINIA

Chapter 33-12
Series XX
(1984)

Subject: Regulation Relating to Excess Line Brokers

Section 1. General

1.01. Scope - This legislative rule establishes certain requirements for the licensing and regulation of excess line brokers pursuant to Chapter 33, Article 12 of the Code of West Virginia of 1931, as amended.

1.02. Authority - This legislative rule is issued under the authority of Chapter 33, Article 2, Section 10 of the Code of West Virginia of 1931, as amended.

1.03. Filing Date - This legislative rule was promulgated on the _____ day of _____, 1984, and was filed on the _____ day of _____, 1984, in the Office of the Secretary of State.

1.04. Effective Date - This legislative rule becomes effective on the _____ day of _____, 1984.

Section 2. Definitions

2.01. Commissioner means the insurance commissioner of West Virginia.

2.02. Evidence of Insurance means written or printed statements evidencing the applicability and effectiveness of insurance coverages, including but not limited to policy forms, certificates, cover notes, binders, and other traditionally acceptable evidences of insurance.

2.03. Excess Line Insurer means an insurer not licensed by the commissioner to do insurance business, and considered to be a non-admitted insurer, in the State of West Virginia.

2.04. Excess Line Broker means an individual licensed pursuant to the provisions of this regulation and West Virginia Code § 33-12-13, for the purposes of placing insurance of risks resident, located or to be performed in this State, with an excess line insurer.

2.05. Excess Line Market means the entire scope of insurance business on risks resident, located or to be performed in this State, to be placed with an excess line insurer.

2.06 Insolvent Insurer means any insurer which is determined to be insolvent in accordance with the provisions of Chapter 33 of the Code of West Virginia of 1931, as amended, or any insurer which is determined to be insolvent by the commissioner of any other state.

2.07. Licensed Insurer means an insurer licensed by the commissioner to do insurance business in the State of West Virginia.

Section 3. Licensing of an Excess Line Broker; Revocation, Suspension or Refusal to Renew License, and Penalty in Lieu Thereof

3.01. Licensing Requirements - Any applicant for an excess line broker's license issued or renewed under the provisions of West Virginia Code § 33-12-13:

A. Shall be a duly licensed West Virginia resident agent holding a current and valid license for the type(s) of insurance which the applicant expects and intends to export to the excess line market; and,

B. Shall have held for at least three consecutive years immediately preceding the date of application a valid agent's license for the type(s) of insurance the applicant expects and intends to export to the excess line market, and shall have held a valid West Virginia resident agent's license for such type(s) of insurance for at least one of those three years. The commissioner, in his discretion, may waive this requirement if the applicant otherwise demonstrates the necessary trustworthiness and competence by education, experience or other relevant factors; and,

C. Shall satisfactorily complete an examination administered by the office of the commissioner or its designated agent. The commissioner shall not require an examination for

any person who holds a current and valid excess line broker's license in West Virginia on the effective date of this regulation; and,

D. Shall pay the required license fee as established by the provisions of West Virginia Code § 33-12-13; and,

E. Shall file with the commissioner and thereafter maintain in force for so long as the license or any renewal thereof remains in effect, a bond in favor of the State of West Virginia in the penal sum as established by the provisions of West Virginia Code § 33-12-13, with an authorized corporate surety approved by the commissioner, conditioned that he shall conduct business under his license in accordance with this regulation and the West Virginia Code. No bond shall be terminated unless at least thirty-days' prior written notice thereof is filed with the commissioner; and,

F. Shall be deemed trustworthy for the purpose of conducting insurance business as an excess line broker, as required by the provisions of West Virginia Code § 33-12-13; and,

G. Shall satisfy any other criteria reasonably established by the commissioner.

3.02 Revocation, Suspension or Refusal to Renew License - Whenever, after notice and hearing, the commissioner is satisfied that any excess line broker has violated any provisions of

any administrative regulation of the commissioner or any provisions of Chapter 33 of the Code of West Virginia of 1931, as amended, or is incompetent or untrustworthy, he shall revoke, suspend or refuse to renew the license of such excess line broker as required by the provisions of West Virginia Code § 33-12-25. In lieu of revoking, suspending or refusing to renew such license, the commissioner, in his discretion, may order such licensee to pay to the State of West Virginia a penalty in a sum not to exceed one hundred dollars for each violation, and upon failure of such licensee to pay such penalty by delivery of such sum to the commissioner within thirty days of notice thereof, the commissioner shall revoke, suspend or refuse to renew such license.

Section 4. Placement of Excess Line Coverages

4.01. Due Diligence - In accordance with the provisions of West Virginia Code § 33-12-10(b), the insurance coverage written by an excess line insurer and placed by an excess line broker shall not be procurable from licensed insurers authorized to transact that kind of insurance in this State. The broker shall submit to the commissioner a sworn notarized statement, as provided in Section 4.04 of this regulation, that a diligent search has been made to place the risk with licensed insurers

authorized to write and actually writing the particular type of risk sought to be placed in the excess line market. This statement also shall include the reasons why the broker has been unable to place the risk with licensed insurers.

4.02. Notification - Each excess line 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.

4.03. Countersignature - In accordance with the provisions of West Virginia Code § 33-12-7, no contract of insurance covering a subject of insurance, resident, located or to be performed in this State, shall be executed, issued or delivered by an excess line broker unless the contract is signed or countersigned in writing by a duly licensed excess line broker. This section does not apply to: Reinsurance; credit insurance; any contract of insurance covering the rolling stock of any railroad or covering any vessel, aircraft or motor carrier used in interstate of foreign commerce, or covering any liability or other risks incident to the ownership, maintenance or operation thereof; any contract of insurance covering any property in interstate or foreign commerce, or any liability or risks incident thereto.

4.04. Excess Line Broker's Affidavit and Report - Each excess line broker shall execute and file with the commissioner, in accordance with the provisions of West Virginia Code § 33-12-11, the information requested on the Form Leb-3, as revised, attached to and made a part of this regulation. This report shall be filed under oath, and shall be received by the commissioner within forty-five days after the effective date of coverage, or within fifteen days after delivery of the policy or other acceptable evidence of insurance, whichever is sooner.

4.05. Records of Excess Line Broker - In accordance with the provisions of West Virginia Code § 33-12-15, each excess line broker shall keep in his office a full and true record of each excess line contract procured by him, and such records may be examined at any time thereafter by the commissioner. The records shall include the following items as they are applicable:

A. Name and address of the excess line insurer; and,

B. Name and address of the insured; and,

C. Amount of insurance; and,

D. Gross premium charged; and,

E. Return premium paid, if any; and,

F. Rate of premium charged on the several items of coverage; and,

G. Effective date of the contract and the terms thereof; and,

H. Brief general description of the risks insured against and the property insured.

4.06 Responsibilities of the Excess Line Broker - Each licensed excess line broker who participates directly or indirectly in affecting any insurance contract on an excess line basis:

A. In no instance shall knowingly place any coverage in an insolvent insurer, in accordance with the provisions of West Virginia Code § 33-12-22; and,

B. May accept and place authorized excess line business from any insurance agent or broker licensed in this State for the kind of insurance involved, and may compensate such agent or broker thereof. The excess line broker shall have the right to receive from the excess line insurer the customary commission, in accordance with the provisions of West Virginia Code § 33-12-14; and,

C. In those instances in which excess line business is produced to an excess line broker by an agent or broker licensed in this State for the kind of insurance involved, it remains the excess line broker's responsibility to make the necessary filing of the Form Leb-3, as revised.

4.07. Excess Line Insurance Valid - In accordance with the provisions of West Virginia Code § 33-12-12, any insurance contract procured as excess line coverage from an excess line insurer shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by licensed insurers.

Section 5. Excess Line Premium Tax Annual Return and Report by Broker

5.01 Reporting of Premiums Placed and Taxed - Each excess line broker licensed in accordance with the provisions of this regulation and West Virginia Code § 33-12-13 shall make a return annually, under oath, on or before the first day of March, to the commissioner, of the gross amount of premium charged the insureds by excess line insurers for insurance procured by such licensee, including any so-called dividends on participating insurance policies applied in reduction of premiums, less premiums returnable for cancellation. Such return shall be reported by the completion of the Excess Line Broker's Annual Statement Form Leb-4, as revised, prepared and supplied by the commissioner.

5.02. Payment of Excess Line Premium Taxes - The annual tax required to be paid under the provisions of this regulation shall be a sum equal to that in accordance with

the provisions of West Virginia Code § 33-12-16 and § 33-12-16a, and shall be paid to the commissioner on or before the first day of March. All such taxes paid to the commissioner shall be paid by him into the State treasury for the benefit of the State fund, unless otherwise required by the Code of West Virginia of 1931, as amended.

Section 6. Separability

6.01. Partial Invalidity - If any provision of this regulation is held invalid, the remainder of this regulation shall not be affected thereby.

STATE OF WEST VIRGINIA
INSURANCE COMMISSIONER
CHARLESTON 25305

REPORT OF AN EXCESS LINE INSURANCE POLICY PLACED BY AN EXCESS LINE BROKER

STATE OF WEST VIRGINIA, COUNTY OF _____

I, _____, an Excess Line Broker duly licensed by the State of West Virginia, hereby make oath and state to the Insurance Commissioner of West Virginia that pursuant to W.Va. Code §33-13-10(b) a diligent effort has been made to procure the amount of insurance necessary to protect against loss of or damage to property or person from insurers licensed to transact and actually writing this type of insurance business in West Virginia, and that the placing of this insurance has not been for the purpose of securing advantages as to premium rate or terms of the insurance contract. This insurance has not been placed with a licensed insurer because: _____

_____

Name of Insured: _____

Address of Insured: _____

Location of Risk: _____

Description of Property: _____

Nature of Insurance: _____

Policy No: _____ Inception Date: _____ Term: _____

Gross premium this policy: $_____ Premium Rate: $_____

Amount of insurance with licensed insurers: $_____

Amount of insurance with excess line insurers: $_____

Name and address of excess line insurer which issued above-numbered policy:

_____

Having failed to procure the required insurance with insurers licensed to transact business in West Virginia, I make oath that the following statements were printed or stamped in contrasting color on the face of this policy or other evidence of insurance: "THIS COMPANY IS NOT LICENSED TO DO BUSINESS IN WEST VIRGINIA, AND IS NOT SUBJECT TO THE WEST VIRGINIA INSURANCE GUARANTY ACT."

Witness my signature this ____ day of _____, 19___.

Affiant: _____

Subscribed and sworn to before me this ____ day of _____, 19___.

Notary Public: _____

My Commission expires: _____.

West Virginia Code §33-12-11 requires that this report be filed for each policy of excess line insurance obtained. Pursuant to the Administrative Regulations of the Insurance Commissioner, Series XX, Section 4.04, this report, completed in its entirety, shall be received by the Commissioner within 45 days after the effective date of coverage, or within 15 days after delivery of the policy or other acceptable evidence of insurance, whichever is sooner.

FORM LEB-3 (5/83)