WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION

Form #7

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2011 JUN -9 PM 3:27

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Offices of the Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY W. Va. Code §33-2-10

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 20

TITLE OF RULE BEING AMENDED: Surplus Lines Insurance

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: ____

TITLE OF RULE BEING AMENDED: ____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

PLEASE SEE ATTACHED

Charles O. Lorensen
Cabinet Secretary
West Virginia Department of Revenue

Use additional sheets if necessary

Title 114, Series 20 - Emergency Rule
Surplus Lines Insurance

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY:

Effective July 20, 2011, a new federal statute changes how surplus lines insurance is able to be taxed and regulated by the states and preempts inconsistent state laws. Under the new federal law, only the "home state" of an insured can collect taxes on a surplus lines policy covering multi-state risks. In 2011, the West Virginia Legislature enacted SB 435 to amend its surplus lines statutes to reflect these changes, including the establishment of a "blended tax rate" and authorizing the Insurance Commissioner to enter into a national agreement with respect to allocating premium taxes among the states where there existed a risk under a surplus lines policy. The federal law permits the states to enter into allocation agreements, but that issue is currently being hotly debated and there is no consensus on how this is to be done. The proposed emergency rule establishes rules for the transition period as to how the taxes are to be paid, allocated, etc. under various situations, e.g. West Virginia joins one of the proposed national agreements. SB 435 refers to "applicable rates," and these rates are established in the rule as well.

Insurance Commissioner
Emergency Rule
Title 114, Series 20

SURPLUS LINES INSURANCE

TITLE 114, SERIES 20

BRIEF SUMMARY OF RULE

This rule reflects changes made by SB 435 (2011), which implemented provisions of the federal Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA", added as an amendment to the federal Dodd-Frank Wall Street Reform & Consumer Protection Act and signed into law on July 21, 2010). NRRA streamlines regulation of surplus lines insurance covering risks in multiple states; limits regulation and taxation of non-admitted insurance to the insured's home state; implements nationwide eligibility requirements in conformance with the National Association of Insurance Commissioners' ("NAIC") model act pertaining to surplus lines insurance; and preempts inconsistent state laws. The rule makes provisions for West Virginia's execution of the National Insurance Multi-State Agreement and its participation in the clearinghouse process being spearheaded by NAIC (as permitted by SB 435). The clearinghouse will accept tax collections and allocate them to the participating states.

Insurance Commissioner
Emergency Rule
Title 114, Series 20

SURPLUS LINES

TITLE 114, SERIES 20

STATEMENT OF CIRCUMSTANCES

The federal law on which SB 435 (2011) is based, the Nonadmitted and Reinsurance Reform Act ("NRRA"), preempts any state laws that conflict with it in the areas of regulation and taxation of surplus lines insurance. Unlike the situation today in West Virginia and most other states in which a surplus lines licensee has to file tax returns and remit taxes in every state in which a risk is covered under a policy covering risk in multiple states, the NRRA provides that only the "home state" of an insured may collect taxes on such polices. The federal act, however, permits the states to enter into agreements to allocate such taxes paid to the home state, and the National Association of Insurance Commissioners is developing a multi-state agreement (NIMA) to effect an allocation scheme under which the home state would send taxes collected with respect to risks in other states for distribution to such other states through a "clearinghouse." SB 435 enables West Virginia to avoid the possible loss of authority to obtain its allocated shares by authorizing the Insurance Commissioner to enter into such a multi-state agreement; this rule also incorporates the NRRA statutory changes, e.g. definition of "home state."

Insurance Commissioner
Emergency Rule
Title 114, Series 20

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June 9, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WV OFFICES OF THE INSURANCE COMMISSIONER
ATTN: Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

EMERGENCY RULE TITLE: SURPLUS LINES INSURANCE
(Title 114, Series 20)

1. Date of Filing:

June 9, 2011.

2. Statutory authority for promulgating emergency rule:

W. Va. Code §33-2-10 (general authority of OIC Commissioner to propose rules).

3. Date of filing of proposed legislative rule:

June 8, 2011.

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

Amends current legislative rule.

5. Has the same or similar emergency rule previously been filed and expired?

No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety and welfare.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein. Subtitle B (section 512) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (effective date July 21, 2011 for the Non-Admitted and Reinsurance Reform Act of 2010)

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to public interest.

Effective July 20, 2011, a new federal statute changes how surplus lines insurance is able to be taxed and regulated by the states and preempts inconsistent state laws. Under the new federal law, only the "home state" of an insured can collect taxes on a surplus lines policy covering multi-state risks. In 2011, the West Virginia Legislature enacted SB 435 to amend its surplus lines statutes to reflect these changes, including the establishment of a "blended tax rate" and authorizing the Insurance Commissioner to enter into a national agreement with respect to allocating premium taxes among the states where there existed a risk under a surplus lines policy. The federal law permits the states to enter into allocation agreements, but that issue is currently being hotly debated and there is no consensus on how this is to be done. The proposed emergency rule establishes rules for the transition period as to how the taxes are to be paid, allocated, etc. under various situations, e.g. West Virginia joins one of the proposed national agreements. SB 435 refers to "applicable rates," and these rates are established in the rule as well.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Surplus Lines Insurance (Title 114, Series 20)

Type of Rule: ____ Legislative _____Interpretive ___Procedural _X_ Emergency

Agency: WV Offices of the Insurance Commissioner

Address: Post Office Box 50540

1124 Smith Street, Greenbrooke Building

Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: Timothy.Murphy@wvinsurance.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

May decrease administrative costs inasmuch as the anticipated clearinghouse will handle the new allocation duties (with fees assessable to the carriers), impact on revenues is unknown because the states are proceeding in different directions with regard to allocation, possible decrease in revenues inasmuch as West Virginia is less likely to be a "home state".

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	N/A	N/A	N/A
Personal Services	N/A	N/A	N/A
Current Expenses	N/A	N/A	N/A
Repairs & Alterations	N/A	N/A	N/A
Assets	N/A	N/A	N/A
Equipment	N/A	N/A	N/A
Other	N/A	N/A	N/A
2. Estimated Total Revenues	N/A	N/A	N/A

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

Insureds will be assessed fees to pay for any added costs of operating the national clearinghouse.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Currently there is too much uncertainty nationally to assess the impact, there will be administrative efficiencies created with the single home-state filings and the central allocation process through the clearinghouse, but the effect of the non-NIMA participants -- both those joining the alternative compact process and those joining neither -- will have to be experienced for a period before the full impact is known.

Date: 6-9-11

Signature of Agency Head or Authorized Representative

Timothy Murphy, Associate Counsel
WV Offices of the Insurance Commissioner
P. O. Box 50540
Charleston WV 25305-0540
Timothy.Murphy@wvinsurance.gov

114 CSR20

TITLE 114
EMERGENCY RULE
INSURANCE COMMISSIONER

SERIES 20
SURPLUS LINES INSURANCE

Section

114-20-1. General.

114-20.2. Definitions.

114-20-3. Licensing of a Surplus Lines Licensee; Revocation, Suspension or Refusal to Renew License and Penalty in Lieu Thereof.

114-20-4. Placement of Surplus Lines Coverages.

114-20-4A. Exempt Commercial Purchasers.

114-20-5. Surplus Lines Premium Tax Annual Return and Report by Surplus Lines Licensee.

114-20-6. Allocation of ~~Surplus Lines Insurance~~ Premium Tax on Multi-State Risks.

114-20-7. Export List.

114-20-8. Conditions For Marketing Insurance With Surplus Lines Insurers.

~~114-20-9. Separability.~~

Appendix A Nonadmitted Insurance Multi-State Agreement (NIMA)

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SECRETARY OF STATE

114 CSR20

TITLE 114
EMERGENCY RULE
INSURANCE COMMISSIONER

SERIES 20
SURPLUS LINES INSURANCE

§114-20-1. General.

1.1. Scope. -- This emergency rule establishes certain requirements for the licensing and regulation of surplus lines licensees, regulates access to the surplus lines market, ~~and~~ prescribes procedures for the placement of insurance with surplus lines insurers ~~pursuant to W. Va. Code §33-12C-1 et. seq.~~ and provides for the collection and allocation of premium taxes.

1.2. Authority. -- W. Va. Code §33-2-10.

1.3. Filing Date. -- ~~May 6, 2005.~~

1.4. Effective Date. -- ~~May 6, 2005.~~

§114-20-2. Definitions.

2.1. "Admitted insurer" means an insurer licensed to do an insurance business in this state.

2.2. "Affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured. An entity has control over another entity if it directly or indirectly or acting through one or more persons owns, controls, or has the power to vote 25% or more of any class of voting securities of the other entity, or the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

2.3. "Affiliated Group" means any group of entities that are all affiliated.

2.4. "Business entity" means a corporation, association, partnership, limited liability company, or other legal entity.

2.5. "Capital," as used in the financial requirements of W. Va. Code 33-12C-5, means funds paid in for stock or other evidence of ownership.

2.6. "Clearinghouse" means the entity established pursuant to NIMA to facilitate the receipt and distribution of premium taxes and transaction data related to nonadmitted insurance.

~~2.1.~~ 2.7. "Commissioner" means the ~~Insurance Commissioner of~~ West Virginia Insurance Commissioner.

2.8. "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance.

~~2.2.~~2.9. "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.

2.10. "Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, employs or retains a qualified risk manager to negotiate insurance coverage, has paid aggregate nationwide commercial property and casualty insurance premiums in excess of $100,000 in the immediately preceding twelve months, and meets at least one of the following criteria:

2.10.a. Has net worth in excess of $20 million;

2.10.b. Generates annual revenues in excess of $50 million;

2.10.c. Employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1000 employees in the aggregate;

2.10.d. Is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $30 million; or

2.10.e. Is a municipality with a population in excess of 50,000 persons: *Provided*, that on January 1, 2015 and every five years thereafter, the amounts in subdivisions a, b and d of this subsection shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the federal Department of Labor.

2.11. "Export" means to place surplus lines insurance with a nonadmitted insurer.

~~2.8.~~2.12. "Export list" means a list published by the Commissioner of coverages and classes of insurance for which the commissioner has determined no general market exists with admitted insurers.

2.13. "Foreign decree" means any decree or order in equity of a court located in any United States jurisdiction, including a federal court of the United States, against any person engaging in the transaction of insurance in this state.

2.14. "Home state" means, with respect to an insured:

2.14.a. 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

2.14.b. If 100% of the insured risk is located out of the state referred to in subdivision a of this subsection, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

2.15. "Individual" means any private or natural person as distinguished from a partnership, corporation, limited liability company or other legal entity.

~~2.6.~~2.16. "Insolvent Insurer" means any insurer which is determined to be insolvent in accordance with the provisions of chapter thirty three of the West Virginia Code, or any insurer which is determined to be insolvent by the commissioner of any other state.

2.17. "Insurance" means any of the lines of authority listed in W. Va. Code 33-1-10.

2.18. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.

2.19. "Insurer" means any person, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, insurance exchange syndicate, fraternal benefit society, and any other legal entity engaged in the business of making contracts of insurance.

2.20. "Kind of insurance" means one of the types of insurance required to be reported in the annual statement which must be filed with the Commissioner by admitted insurers.

2.21. "License" means a document issued by the Commissioner authorizing an individual to act as a surplus lines licensee of the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent to commit an insurer.

~~2.7.~~2.22. "Licensed Insurer" means an insurer licensed by the commissioner to do insurance business in the state of West Virginia.

2.23. "Line of insurance" means coverage afforded under the particular policy that is being placed.

2.24. "Model allocation schedule and reporting form" means the current version of the NAIC model allocation schedule and reporting form for surplus lines insurers.

2.25. "Nonadmitted and Reinsurance Reform Act of 2010" or "NRRA" means those provisions incorporated as Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-517.

2.26. "Nonadmitted Insurance Multi-State Agreement" or "NIMA" means the model agreement first adopted by the NAIC on December 16, 2010, to facilitate the collection, allocation and disbursement of premium taxes attributable to the placement of nonadmitted insurance, provide for uniform methods of allocation and reporting among nonadmitted insurance risk classifications, and share information among states relating to nonadmitted insurance taxes; such term includes the agreement's allocation tables and any changes made thereto in response to changes of the laws of signatory states; a copy of the model agreement is attached as appendix A.

2.27. "Nonadmitted insurer" means an insurer not licensed to do an insurance business in this state.

2.28. "Person" means any natural person or other entity, including, but not limited to individuals, partnerships, associations, trusts or corporations.

2.29. "Policy" or "contract" means any contract of insurance.

~~2.9.~~2.30. "Producer" means an individual insurance producer.

2.31. "Signatory state" or "participating state" means a state that has entered into NIMA.

2.32. "Surplus lines insurance" or "excess lines insurance" means any property and casualty insurance in this state of properties, risks or exposures, located or to be performed in the state, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance.

~~2.3.~~2.33. "Surplus Lines Insurer" means an insurer not licensed by the commissioner to do insurance business, and considered to be a nonadmitted insurer, in the state of West Virginia.

~~2.4.~~2.34. "Surplus Lines Licensee" means an individual licensed pursuant to the provisions of this rule and W. Va. Code §33-12C-8 for the purposes of placing insurance on risks resident, located or to be performed in this state, with a surplus lines insurer.

~~2.5.~~2.35. "Surplus Lines Market" means the entire scope of insurance business on risks resident, located or to be performed in this state, to be placed with a surplus lines insurer.

~~2.10.~~2.36. "Surplus lines transaction" means the solicitation, negotiation, procurement or effectuation with a surplus lines insurer of an insurance contract or certificate of insurance. It also means any renewal, cancellation, endorsement, audit, or other adjustment to the insurance contract.

2.37. "Wet marine and transportation insurance means:

2.37.a. Insurance upon vessels, crafts, hulls and other interest in them or with relation to them;

2.37.b. Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;

2.37.c. Insurance of freight and disbursements pertaining to a subject of insurance within the scope of this subsection;

2.37.d. Insurance of personal property and interests therein, in the course of exportation from or importation into any country, or in the course of transportations coastwise or on inland water, 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 incidental delays, transshipment, or reshipment; provided, however, that insurance of personal property and interests therein shall both be considered wet marine and transportation insurance if the property has;

2.37.d.1. Been transported solely by land;

2.37.d.2. Reached its final destination as specified in the bill of lading or other shipping document; or

2.37.d.3. The insured no longer has an insurable interest in the property.

§114-20-3. Licensing of a Surplus Lines Licensee; Revocation, Suspension or Refusal to Renew License and Penalty in Lieu Thereof.

3.1. Licensing requirements. -- Any applicant for a surplus lines licensee's license issued or renewed under the provisions of W. Va. Code §33-12C-8:

3.1.a. Shall be a duly licensed individual insurance producer holding a current and valid license for the type(s) of insurance which the applicant expects and intends to export to the surplus lines market;

3.1.b. Shall have held for at least three (3) consecutive years immediately preceding the date of application a valid individual insurance producer's license for the type(s) of insurance the applicant expects and intends to export to the surplus lines market, and shall have held a valid West Virginia resident or nonresident individual insurance producer's license for such type(s) of insurance for at least one (1) of those three (3) years, or hold a valid excess or surplus line broker license issued by another state. The commissioner, in his or her discretion, may waive this requirement if the applicant otherwise demonstrates the necessary trustworthiness and competence by education, experience or other relevant factors;

3.1.c. Shall satisfactorily complete an examination administered by the office of the commissioner or its designated agent or hold a valid excess line broker or surplus lines license issued by another state.

3.1.d. Shall pay the required license fee as established by the provisions of W. Va. Code §33-12C-8;

3.1.e. Shall be considered trustworthy for the purpose of conducting insurance business as a surplus lines licensee, as required by the provisions of W. Va. Code §33-12C-8; and

3.1.f. Shall satisfy any other criteria reasonably established by the commissioner.

3.2. Revocation, suspension or refusal to renew license. -- Whenever, after notice and hearing, the commissioner is satisfied that any surplus lines licensee has violated any provisions of any administrative rule of the commissioner or any provisions of W. Va. Code §33-12C-9, or is incompetent or untrustworthy, the commissioner may place on probation, suspend, revoke or refuse to issue or renew a surplus lines licensee's license, or may levy a civil penalty not to exceed five thousand dollars ($5,000.00) or any combination of actions for each violation, and upon failure of the licensee to pay the penalty by delivery of the sum to the commissioner within thirty (30) days of notice of the penalty, the commissioner shall revoke, suspend or refuse to renew the license.

§114-20-4. Placement of Surplus Lines Coverages.

4.1. Diligent Search – ~~In accordance with the provisions of W. Va. Code §33-12C-5(a)(3),~~ Except as provided in section 4A of this rule, insurance coverage written by a surplus lines insurer and placed by a surplus lines licensee for an insured whose home state is West Virginia may not be procured until a diligent search has been made by the individual insurance producer to place the risk with an admitted insurer. The surplus lines licensee shall submit to the commissioner a sworn notarized affidavit~~, as provided in subsection 4.5 4.4 of this rule,~~ that a diligent search has been made by the individual insurance producer to place the risk with licensed insurers authorized to write and actually writing the particular risk sought to be placed in the excess lines market. This affidavit shall be maintained, as required by W. Va. Code §33-12C-16, as part of the full and true record of each surplus lines contract procured.

4.2. The following minimum requirements and conditions apply to the conduct of a diligent search to place a risk with licensed insurers:

4.2.a. The individual insurance producer shall execute and forward to the licensed surplus lines licensee a written statement, in a form prescribed by the commissioner, declaring that a diligent effort to procure the desired coverage from admitted insurers was made. The form shall contain an affidavit that the individual insurance producer complied with the due diligence requirements of this rule. The affidavit shall affirm that the insured was expressly advised prior to the placement of the insurance that:

4.2.a.1. The surplus lines insurer with which the insurance is to be placed is not an admitted authorized insurer in this state and is not subject to the commissioner's supervision; and,

4.2.a.2. In the event the surplus lines insurance becomes insolvent, claims will not be paid nor will unearned premiums be returned by any West Virginia insurance guaranty fund.

4.2.b. No individual insurance producer may solicit, procure, place, or renew any insurance with a nonadmitted insurer unless the producer has been unable to procure the requested insurance from an authorized insurer after conducting a diligent search. A diligent search requires the individual insurance producer to contact as many insurers as the individual insurance producer represents, that customarily write the kind of insurance requested by the insured. A diligent search is presumed if declinations are received from each authorized insurer contacted.

4.2.c. An individual insurance producer shall obtain a declination in writing from the licensed insurer or create a written record of an oral declination by the licensed insurer. A written record of an oral declination shall be made by the person who initially received the

declination or by another employee of the individual insurance producer from information transmitted by the person who received the declination. A declination shall be obtained from the licensed insurer or recorded by or on behalf of the individual insurance producer at or near the time of receipt of the declination, and the records shall be maintained in the regular course of business.

4.2.d. A written record documenting an oral declination shall include:

4.2.d.1. The name, office location and phone number of the licensed insurer or firm acting in the capacity of underwriting manager for the licensed insurer.

4.2.d.2. The name and position of the person contacted.

4.2.d.3. The date of contact.

4.2.d.4. A detailed explanation of the licensed insurer's reasons for declining to insure the risk.

4.2.e. If a licensed insurer fails to respond within 5 business days after first being contacted by the individual insurance producer, the individual insurance producer may assume that the insurer has declined to write the risk. The individual insurance producer shall create a written record of the contact, including the manner in which contact was made and the information required under subdivision d of this subsection.

4.2.f. A declination of coverage by a licensed insurer shall be made by a full time employee of the licensed insurer who has underwriting responsibility or by a full time employee of a firm acting in the capacity of underwriting manager for the licensed insurer.

4.2.g. ~~For purposes of this subdivision, the term "affiliate" is used as defined in W. Va. Code §33-27-2~~ Affiliates.

4.2.g.1. A declination may not be obtained from a licensed insurer which is an affiliate of a licensed insurer from which a declination has already been obtained.

4.2.g.2. Surplus lines insurance may not be placed with an unlicensed insurer that is an affiliate of a licensed insurer from which a declination has been obtained.

4.2.g.3. The restrictions in paragraphs 1 and 2 of this subdivision do not apply if the affiliated insurers write coverage independently of each other using separate and independently developed underwriting criteria and marketing plans and, for underwriting purposes, compete with each other for the same type of coverage or class of insurance.

4.3. Notification. -- 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.

~~4.4. Surplus lines licensee's affidavit and report. -- Each surplus lines licensee shall execute and file with the commissioner, in accordance with the provisions of W. Va. Code §33-12C-7, the information requested on the Annual Affidavit of Surplus Line Licensee and the Annual Report of Written Surplus Lines Policies. This affidavit and report shall be filed under oath, and shall be received by the commissioner on or before the first day of March in conjunction with the Annual Surplus Lines Tax Return Reconciliation, Form Leb 4A, as revised, and as required under subsection 5.1 of this rule. The Annual Affidavit of Surplus Line Licensee shall include a sworn statement that the Annual Report of Surplus Lines Policies is inclusive of every excess line policy procured by the Surplus Line Licensee during the preceding calendar year. The commissioner may require that the Annual Report of Written Surplus Lines Policies be submitted in a computer readable form compatible with the electronic data processing system of the Offices of the Insurance Commissioner.~~

~~4.5~~ 4.4. Records of surplus lines licensee. -- ~~In accordance with the provisions of W. Va. Code §33-12C-16 each~~ Each surplus lines licensee shall keep in his or her office a full and true record of each surplus lines contract procured by him or her on behalf of any insured whose home state is West Virginia, and the records may be examined at any time thereafter by the commissioner. The records shall include the following items as they are applicable:

~~4.5~~ 4.4.a. The name and address of the surplus lines insurer;

~~4.5~~ 4.4.b. The names and addresses of the insureds;

~~4.5~~ 4.4.c. The amount of insurance;

~~4.5~~ 4.4.d. The gross premium charged;

~~4.5~~ 4.4.e. The return premium paid, if any;

~~4.5~~ 4.4.f. The rate of premium charged on the several items of coverages;

~~4.5~~ 4.4.g. The effective date of the contract and the terms of the contract;

~~4.5~~ 4.4.h. A brief general description of the risks insured against and the property insured;

~~4.5~~ 4.4.i. The policy number;

~~4.5~~ 4.4.j. The written due diligence declaration of the individual insurance producer required in subsection 4.2 of this ~~rule~~ section unless the due diligence requirement is not applicable; and

~~4.5~~ 4.4.k. Any additional information the commissioner may require to effectuate the provisions of ~~article twelve-c of chapter thirty-three~~ The Nonadmitted Insurance Act, W. Va. Code §33-12C-1 *et seq.*, and NIMA.

~~4.6.~~ 4.5. Responsibilities of the surplus lines licensee. -- Each licensed surplus lines licensee who participates directly or indirectly in effecting any insurance contract on a surplus lines basis on behalf of any insured whose home state is West Virginia:

~~4.6.~~ 4.5.a. Shall, in no instance, knowingly place any coverage in an insolvent insurer, in accordance with the provisions of W. Va. Code §33-12C-26;

~~4.6.~~ 4.5.b. May accept and place authorized surplus lines business from any individual insurance producer licensed in this state for the kind of insurance involved, and may compensate the individual insurance producer. The surplus lines licensee has the right to receive from the surplus lines insurer the customary commission, in accordance with the provisions of W. Va. Code §33-12C-15; and

~~4.6.c. In those instances in which surplus lines business is produced to a surplus lines licensee by an individual insurance producer licensed in this state for the kind of insurance involved, it is the surplus lines licensee's responsibility to include the necessary information in the Annual Report of Written Surplus Lines Policies required by subsection 4.5 4.4 of this rule and the Annual Surplus Lines Tax Return Reconciliation Form Leb 4A, as required by subsection 5.1 of this rule.~~

~~4.7.~~ 4.6. Surplus lines insurance valid. -- In accordance with the provisions of W. Va. Code §33-12C-5, any insurance contract procured as surplus lines coverage from a surplus lines 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.

§114-20-4A. Exempt Commercial Purchasers.

4A.1. A licensee is not required to perform a diligent search in accordance with section 4 of this rule when seeking to procure or place nonadmitted insurance for an exempt commercial purchaser whose home state is West Virginia if the prospective purchaser has signed a document prior to the placement of such insurance that provides that the licensee has disclosed that such insurance may or may not be available from an admitted insurer that might provide greater protection and more regulatory oversight and that the purchaser has nonetheless requested that the licensee procure or place with a nonadmitted carrier.

§114-20-5. Surplus Lines Premium Tax Annual Return and Report by Surplus Lines Licensee.

5.1. ~~Reporting of premiums placed and taxed. Each~~ On and after the date on which NIMA is made effective in this state, each surplus lines licensee ~~licensed in accordance with the provisions of this rule and W. Va. Code §33-12C-8, shall make under oath to the commissioner,~~ with respect to those policies where West Virginia is the home state and for which the payment of premium taxes is due shall:

5.1.a. Forward such payments and related information as required by NIMA to the Clearinghouse for deposit in the Clearinghouse account and shall send any additional information to the Commissioner as may be required by him or her as set forth on the agency website.

5.1.b. Make a quarterly ~~return~~ tax filing on or before ~~the twenty fifth day of the month succeeding the close of the quarter and an annual reconciliation return on or before the first day of March of the gross amount of premium charged the insured by surplus lines insurers and the gross amount of the fees charged by the surplus lines licensee for insurance procured by the surplus lines licensee during the previous calendar year, including any so called dividends on participating insurance policies applied in reduction of premiums, less premiums returnable for cancellation~~ February 15 for the quarter ending the preceding December 31, May 15 for the quarter ending the preceding March 31, August 15 for the quarter ending the preceding June 30, and November 15 for the quarter ending the preceding September 30. ~~The surplus lines licensee shall complete the Quarterly Surplus Lines Tax Return, Form Leb 4 and Annual Surplus Lines Tax Return Reconciliation Form Leb 4A, as revised, prepared and supplied by the commissioner;~~ and

5.1.c. Pay such fees as may be established by the Clearinghouse.

5.2. Payment of surplus lines premium taxes. -- ~~The tax~~ On and after the date on which NIMA is made effective in this state, the taxes required to be paid under the provisions of this rule ~~shall be a sum equal to that in accordance with the provisions of W. Va. Code §33-12C-7, and shall be paid to the commissioner on a calendar year basis and in quarterly estimated installments due and payable on or before the twenty fifth day of the month succeeding the close of the quarter in which they accrued, except for the fourth quarter. For the fourth quarter, the~~

~~taxes shall be due and payable and final computation of the actual total liability for the prior calendar year shall be made, less credit for the three quarterly estimated payments on or before the first day of March . All the taxes paid to the commissioner shall be paid by him or her into a special account in the state treasury, designated the "municipal pensions and protection fund," and after appropriation by the Legislature, shall be distributed in accordance with the provisions of W. Va. Code §33-3-14D(c)~~ where West Virginia is the home state, are as follows:

5.2.a. On the portion of premium allocated to West Virginia, as determined by the Commissioner based on Annex A and Annex B of NIMA – 4.55%;

5.2.b. On the portion of the premium allocated to each signatory state, as determined by the Commissioner based on Annex A and Annex B of NIMA – the rate specified by that state, as listed in allocation tables published by the Clearinghouse; and

5.2.c. On the portion not allocated under either subdivision a or b of this subsection and therefore deemed to be allocated to non-participating states – 4.55%.

5.3. Transition periods.

5.3.a. A policy with an effective date prior to July 1, 2011, remains subject to the provisions of this rule in effect on June 30, 2011, with respect to the applicable rates, allocation, remittance and reporting.

5.3.b. A policy with an effective date on or after July 1, 2011 and which is within a period that NIMA is not in effect in this state, is subject a tax of 4.55% on all premium, which amount is payable in the manner and at such times set forth on the Commissioner's website.

5.3.c. A policy with an effective date which is within a period that NIMA is in effect in this state is subject to the provisions of subsections 5.1 and 5.2 of this section.

§114-20-6. Allocation of ~~Surplus Lines Insurance~~ Premium Tax on Multi-State Risks.

~~6.1. Premium tax on multi-state risks shall be allocated as follows:~~

~~6.1.a. In determining the amount of premiums taxable in this state, all premiums written, procured or received in this state shall be presumed to be written on properties, risks or exposures located or to be performed in this state, except:~~

~~6.1.a.1. For a reciprocal state, premiums that are allocated or apportioned as taxable premiums of the reciprocal state in accordance with the provisions of this rule, but the tax payable to this state shall not be less than the tax due pursuant to this rule. However, if the~~

~~amount of tax due under this provision is less than $50 in any jurisdiction, it shall be payable in the jurisdiction in which the affidavit is required to be filed; or~~

~~6.1.a.2. For a nonreciprocal state, premiums that are allocated or apportioned as taxable premiums of the nonreciprocal state and the taxes have been paid to the nonreciprocal state.~~

~~6.1.b. On an insurance policy covering properties, risks or exposures located or to be performed in various states, the tax to be paid to the commissioner of each state shall be computed on that portion of the policy premium that is attributable to properties, risks or exposures located or to be performed in each state.~~

~~6.1.c. The surplus lines licensee shall determine the taxable portion of the premium by using one of the following methods:~~

~~6.1.c.1. Allocate premium on the same basis or bases used to establish the policy premium; or~~

~~6.1.c.2. Allocate premium as prescribed in the allocation schedule prescribed by the commissioner that pertains to the classification describing the coverage, subject to the following:~~

~~6.1.c.2.A. If the allocation schedule does not identify a classification appropriate to the properties, risks or exposures being insured, the surplus lines licensee shall use an alternative equitable method of allocation; and~~

~~6.1.c.2.B. If a policy covers more than one classification:~~

~~6.1.c.2.B.1. For any portion of the coverage identified by a classification on the allocation schedule, the tax shall be computed by using the allocation schedule for the corresponding portion of the premium;~~

~~6.1.c.2.B. 2. For any portion of the coverage not identified by a classification on the allocation schedule, the tax shall be computed in accordance with subparagraph A, paragraph 2 of this subdivision; and~~

~~6.1.c.2.B.3. For any portion of the coverage where the premium is indivisible, the tax shall be computed by using the method of allocation that pertains to the classification describing the predominant coverage.~~

~~6.1.d. If the information provided by the surplus lines licensee or the insured who has independently procured insurance is insufficient to substantiate its method of allocation, or if the commissioner determines that its method is incorrect, the commissioner shall determine the equitable and appropriate amount of tax due to this state, as follows:~~

~~6.1.d.1. If the allocation schedule identifies a classification appropriate to the coverage, the commissioner shall use the method prescribed in subdivision c of this subsection.~~

~~6.1.d.2. If the allocation schedule does not identify a classification appropriate to the coverage, the commissioner, in determining the equitable and appropriate amount of tax due to the state, shall give significant weight to documented evidence of the underwriting bases and other criteria used by the insurer. The commissioner may also consider other available information, to the extent sufficient and relevant, such as the percentage of the insured's physical assets in this state, the percentage of the insured's employee payroll in this state, the percentage of the insured's sales in this state and the amount of premium tax paid to another jurisdiction for the policy.~~

~~6.2. Reporting and remittance of tax. -- Each surplus lines licensee shall file a tax allocation report on the form prescribed by the commissioner.~~

~~6.2.a. The commissioner may at least annually furnish to the commissioner of a reciprocal state a copy of all filings reporting an allocation of taxes required by this section.~~

~~6.2.b. The preparation and submission of tax allocation reports and the payment of independently procured insurance taxes by a surplus lines licensee of another state to the commissioner of this state either directly or indirectly for lawful transactions taking place outside this state shall not be considered the placement of insurance in this state by the surplus lines licensee.~~

6.1. The method of tax allocation for multi-state risks shall be that set forth in Annex A and Annex B of NIMA.

§114-20-7. Export List.

7.1. Commissioner may maintain export list. -- The commissioner may maintain an export list of insurance coverages and classes that may be placed with surplus lines insurers for insureds whose home state is West Virginia.

7.1.a. The commissioner may consider the following in determining the insurance coverages and classes to be listed:

7.1.a.1. The current marketplace;

7.1.a.2. Information from the surplus line licensees;

7.1.a.3. Information from admitted and surplus lines insurers doing business in West Virginia;

7.1.a.4. Information from other sources, including producers and consumers; and

7.1.a.5. Any other information the commissioner deems relevant.

7.1.b. Any person may request in writing that, at the next publication of the list, the commissioner add or remove a coverage or class of insurance from the list. The person must provide evidence of market conditions to substantiate the request.

7.1.c. The list, if maintained, may be published at least annually but may be revised and republished at any time.

~~7.2. Conditions for placing insurance with surplus lines insurers. — Placement of insurance with surplus lines insurers pursuant to W. Va. Code §33-12C-4 may only be done in accordance with either subdivision a or b of this subsection.~~

~~7.2.a. Insurance coverages and classes included on the export list may be placed with surplus lines insurers.~~

~~7.2.b. Insurance coverages and classes not included on the export list may only be placed with surplus lines insurers once a diligent search has been made.~~

§114-20-8. Conditions For Marketing Insurance With Surplus Lines Insurers.

8.1. Producers may not solicit business on behalf of a surplus lines insurer. However:

8.1.a. Producers may advertise the availability of insurance products for the insurance coverages and classes included on the export list to potential insureds and other producers.

8.1.b. Surplus lines licensees may advertise their services and product lines to other producers.

8.1.c. Such advertisements shall identify the fact that the insurance will be placed with a surplus lines insurer. The advertisements may not identify the insurer by name nor act as a solicitation on behalf of any surplus lines insurer. The advertisements may not identify specific rates or specific policy provisions.

8.2. Once negotiations over the available terms and conditions for specific coverages begin, at least the following facts must be disclosed in writing to the potential insured:

8.2.a. That the insurance will be placed through a surplus lines insurer and the name of the insurer;

8.2.b. That the producer is not an agent of the potential insurer because surplus lines insurers are not permitted to appoint individual insurance producers;

8.2.c. That the surplus lines market is a specialty market that has limited regulatory oversight by the commissioner, and specifically, there is no regulation of policy coverage forms or rates; and

8.2.d. That no protection is afforded under any West Virginia guaranty fund mechanism.

8.3. Subject to the general provisions of W. Va. Code §§33-12C-1 *et seq.*, a surplus lines licensee may originate surplus lines insurance or accept applications for surplus lines insurance from any other producer duly licensed as to the kinds of insurance involved. The surplus lines licensee may compensate the producer.

~~**§114-20-9. Separability.**~~

~~9.1. Partial invalidity. -- If any provision of this rule is held invalid, the remainder of this rule shall not be affected thereby.~~

APPENDIX A

NONADMITTED INSURANCE MULTI-STATE AGREEMENT (NIMA)

WHEREAS, the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"), which was incorporated into the Dodd-Frank Wall Street Reform and Consumer Protection Act, provides that only an insured's "Home State" may require a premium tax payment for Nonadmitted Insurance; and

WHEREAS, the NRRA authorizes States to enter into a compact or otherwise establish procedures to allocate among the States the Nonadmitted Insurance premium taxes;

NOW, THEREFORE, in consideration of the foregoing, the Participating States that are signatories hereto, do freely and voluntarily enter into this Agreement under the following terms and conditions:

PART I

Purpose

The purposes of this Agreement, through means of joint and cooperative action among the Participating States, are to:

1. Facilitate the payment and allocation of premium taxes on Nonadmitted Insurance for Multi-State Risks among the Participating States in accordance with the premium tax allocation method and formula contained in the Annexes attached to this Agreement and based on the rates established by each Participating State.

2. Require nationwide uniform requirements, forms and procedures that facilitate the reporting, payment, collection and allocation of premium taxes for Nonadmitted Insurance for Multi-State Risks as contemplated by the NRRA.

3. Coordinate reporting of premium taxes and transaction data on Multi-State Risks among Participating States.

4. Establish a Clearinghouse to facilitate the receipt and distribution of premium taxes and transaction data related to Nonadmitted Insurance of Multi-State Risks.

PART II

Definitions

5. For purposes of this Agreement, the following definitions shall apply:

a. "**Agreement**" means this Nonadmitted Insurance Multi-State Agreement (NIMA), entered into by the Participating States pursuant to Section 521(b)(1) of the NRRA.

b. "**Admitted Insurer**" means, with respect to a State, an insurer that is licensed to transact the business of insurance in such State.

c. "**Clearinghouse**" means the entity established pursuant to this Agreement to facilitate the receipt and distribution of premium taxes and transaction data related to Nonadmitted Insurance.

d. "**Home State**" means,

(1) In General.—Except as provided in paragraphs (2) through (5), the term ''Home State'' means, with respect to an insured—

(A) 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

(B) if 100 percent of the insured risk is located out of the State referred to in subparagraph (A), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(2) "Principal place of business" means, with respect to determining the Home State of the insured, (a) the State where the insured maintains its headquarters and where the insured's high-level officers direct, control and coordinate the business activities; or (b) if the insured's high-level officers direct, control and coordinate the business activities in more than one State, the State in which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or (c) if the insured maintains its headquarters or the insured's high-level officers direct, control and coordinate the business activities outside any State, the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(3) "Principal residence" means, with respect to determining the Home State of the insured, (a) the State where the insured resides for the greatest number of days during a calendar year; or (b) if the insured's principal residence is located outside any State, the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(4) Affiliated Groups.—If more than one insured from an affiliated group are named insureds on a single Nonadmitted Insurance contract, the term ''Home State'' means the Home State, as determined pursuant to subparagraph (A) of

paragraph (1) of this subsection, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(5) Group Insurance. When the group policyholder pays 100% of the premium from its own funds, the term "Home State" means the Home State, as determined pursuant to subparagraph (A) of paragraph (1) of this subsection, of the group policyholder. When the group policyholder does not pay 100% of the premium from its own funds, the term "Home State" means the Home State, as determined pursuant to subparagraph (A) of paragraph (1) of this subsection, of the group member.

e. "**Independently Procured Insurance**" means insurance procured by an insured directly from a Nonadmitted Insurer as permitted by the laws of the Home State.

f. "**Licensed**" means, with respect to an insurer, authorization to transact the business of insurance by a license, certificate of authority, charter, or otherwise.

g. "**Multi-State Risk**" means a risk covered by a Nonadmitted Insurer with insured exposures in more than one State.

h. "**Nonadmitted Insurance**" means any Property and Casualty Insurance permitted in a State to be placed directly or through a Surplus Lines Licensee with a Nonadmitted Insurer eligible to accept such insurance. For purposes of this Agreement, Nonadmitted Insurance includes Independently Procured Insurance and Surplus Lines Insurance.

i. "**Nonadmitted Insurer**" means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State, but shall not include a risk retention group, as that term is defined in section (2)(a)(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(a)(4)).

j. "**Non-Participating State**" means any State that has not executed this Agreement.

k. "**Participating State**" means any State that has executed this Agreement and that has not withdrawn or defaulted pursuant to Part VII.

l. "**Property and Casualty Insurance**" means any kind of insurance on property, fidelity and surety insurance, or liability insurance, but does not mean title insurance, workers' compensation insurance, or any insurance on the life of a person, including life insurance, annuities, accident and health insurance, or disability insurance.

m. "**Single-State Risk**" means a risk with insured exposures in only one State.

n. "**Surplus Lines Insurance**" means insurance procured by a Surplus Lines Licensee from a Surplus Lines Insurer as permitted under the law of the Home State; for purposes

of this Agreement, "Surplus Lines" shall also mean excess line as may be defined by applicable State law.

o. "**Surplus Lines Insurer**" means a Nonadmitted Insurer permitted under the law of the Home State to accept business from a Surplus Lines Licensee.

p. "**Surplus Lines Licensee**" means an individual, firm or corporation that is licensed in a State to sell, solicit or negotiate insurance, including the agent of record on a Nonadmitted Insurance policy, on properties, risks or exposures located or to be performed in a State with Nonadmitted Insurers.

6. In this Agreement, unless otherwise specified, words or expressions used in this Agreement have the same meaning as in the Nonadmitted and Reinsurance Reform Act of 2010.

7. The following are the Annexes that are attached to, and that form an integral part of, this Agreement: **Annex A** - Nonadmitted Insurance Premium Tax Allocation Schedule; **Annex B** – Allocation Formula; and **Exhibit 1** – Information Required to be Submitted by the Broker or Insured via the Clearinghouse Web Portal.

PART III

Implementation

8. The Participating State, as signatory herein, represents that it has the legal authority necessary to enter into this Agreement for the purposes stated in the Agreement, including the allocation among the other Participating States of applicable Nonadmitted Insurance premium taxes and the use of the designated Clearinghouse for the facilitation of the payment and distribution of such premium taxes.

9. Pursuant to the terms of this Agreement, each Participating State agrees to:

a. implement nationwide uniform requirements, forms and procedures that facilitate the reporting, payment, collection and allocation of premium taxes for Nonadmitted Insurance for Multi-State Risks;

b. allocate among the applicable Participating States the Nonadmitted Insurance premium taxes required by an insured's Home State as described herein;

c. work collaboratively and in a timely manner towards the imposition of NRRA's Nonadmitted Insurance premium tax reforms by July 21, 2011; and

d. establish and utilize a Clearinghouse to facilitate the receipt, allocation, and distribution of the payment of Nonadmitted Insurance premium taxes to the Participating States.

PART IV

Collection and Allocation Procedures

10. The Clearinghouse will operate pursuant to a plan of operation, to be agreed upon by two-thirds of the Participating States, to ensure that the Clearinghouse and its computer software system are capable of meeting the requirements of this Agreement.

11. Each Participating State agrees to use the Clearinghouse for all Multi-State Risks for which that state is the Home State. Except as otherwise provided, each Participating State agrees to require Surplus Lines Licensees and insureds who independently procure insurance to utilize the Clearinghouse for the reporting and payment of Nonadmitted Insurance premium taxes for all Multi-State Risks for which that state is the Home State. This Agreement shall not require a State to treat any Property and Casualty Insurance as Nonadmitted Insurance where the laws of the State do not provide such treatment. Further, each Participating State may, at its discretion, agree to use the Clearinghouse for any Single-State Risks or non-Property and Casualty Insurance risks for which that state is the Home State.

12. Each Participating State agrees to contract with the Clearinghouse to provide the services that are the subject of this Agreement. There shall be no material variations in the terms of each Participating State's contract with the Clearinghouse and each such contract shall include, but not be limited to, terms prohibiting the Clearinghouse from lobbying, accepting gifts or donations, political activity of any kind, or conflicts of interest, and shall include terms requiring confidentiality of information received by or provided to the Clearinghouse.

13. Each Participating State agrees to require the payment of taxes, fees and assessments when the Participating State is the Home State as follows: (a) as determined by the Home State on the portion of the premium allocated to the Home State based on Annex A and Annex B; (b) specified by each Participating State on the portion of the premium allocated to that State based on Annex A and Annex B; and (c) determined by the Home State on any portion of the premium not allocated under subsections (a) and (b) of this section. Each Participating State agrees to establish one tax rate, encompassing any applicable taxes, fees and assessments, that applies to Nonadmitted Insurance; provided, however, that nothing shall require a Participating State to impose a tax on any kind of insurance for which the State presently does not have an obligation to tax or has allowed an exemption; and further provided that, where a Home State utilizes a surplus lines stamping office, the stamping office may, in accordance with the laws of that State, impose stamping fees in addition to the tax.

14. Each Participating State shall give notice to the Clearinghouse of any changes to its statewide Nonadmitted Insurance premium tax rate and any statewide assessments at least 90 days prior to the effective date of such changes. The Clearinghouse will send notice of any changes to all of the Participating States via electronic mail to the designated contact of each Participating State.

15. Each Participating State agrees to authorize the Clearinghouse, when the Participating State is the Home State, to collect a reasonable fee, to be established by contract between the Participating State and the Clearinghouse, payable by the insured directly or through a Surplus Lines Licensee on each transaction processed through the Clearinghouse to cover the cost of the operations and activities of the Clearinghouse. If the Home State has a stamping office, this fee shall be in addition to the service fee that is received by the stamping office.

16. No Participating State, other than the Home State, may require a Surplus Lines Licensee to submit data, reports or insurance documentation to a stamping office of that State. A Home State with a stamping office may require the initial submission of transaction data, premium taxes and fees with the stamping office of that State provided the State agrees by contract with the Clearinghouse to forward relevant transaction data, premium taxes and fees to the Clearinghouse for distribution to other Participating States.

17. Except as otherwise provided, each Participating State agrees to require, by statute or rule, for those policies of Nonadmitted Insurance where that State is the Home State and for which the payment of Nonadmitted Insurance premium taxes is due, that the Surplus Lines Licensee or insured who independently procures insurance shall forward such payments and related information based on Annex A and Annex B to the Clearinghouse for deposit in the Clearinghouse account. Each Participating State agrees to require that the payment of Nonadmitted Insurance premium taxes will be accompanied by transaction data consistent with Exhibit 1. After the Clearinghouse has collected and reconciled the payments, the appropriate amount will be deposited into each Participating State's depository account at the banking institution selected by the Participating State. With respect to the depository accounts of the Participating States, the Clearinghouse shall only have the authority to transfer premium taxes collected and on deposit in the Clearinghouse account into the depository account of the Participating States.

18. For those policies of Nonadmitted Insurance where transaction data consistent with Exhibit 1 is submitted prior to the payment of Nonadmitted Insurance premium taxes, each Participating State agrees that the accounting of taxes due will be tracked by the Clearinghouse, and the payment thereof will be handled by the Clearinghouse. Each Participating State agrees to require the Surplus Lines Licensee or insured who independently procures insurance, as applicable, to submit information based on Annex A and Annex B. The Clearinghouse will assess the allocated premium based upon each Participating State's statewide Nonadmitted Insurance tax rate and statewide assessments for each Participating State with exposure. At the end of the reporting period, the Clearinghouse will allocate the amount collected on behalf of the

Home State to all other Participating States and net the amounts owed to or from each of the States. The netting of taxes will be based on the actual amount collected.

19. The Clearinghouse will report to the Participating States, Surplus Lines Licensees and insureds who independently procure insurance, within 15 days of the quarterly premium tax filing and payment dates set forth in section 20 of this Part, all premium taxes owed to each of the Participating States for the preceding quarter, the dates upon which payment of such premium taxes are due, and the method through which they were paid to the Clearinghouse.

20. Each Participating State agrees that, when it is the Home State, it shall require tax filings and payments quarterly utilizing the following dates only: February 15 for the quarter ending the preceding December 31, May 15 for the quarter ending the preceding March 31, August 15 for the quarter ending the preceding June 30, and November 15 for the quarter ending the preceding September 30.

21. The Home State agrees to enforce, if necessary and to the extent allowed by the laws of the Home State, any of the following: unpaid tax; interest due; and applicable penalties. The Home State will follow the calculation of these amounts and the methods of collection governed by the laws of the Home State and the plan of operation adopted pursuant to this Agreement.

PART V

Dispute Resolution

22. Each Participating State agrees to exercise best efforts to reach consensus in respect to disputed issues arising on matters governed by this Agreement.

23. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the affected Participating States agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. A dispute involving one or more Participating States or the Clearinghouse is a dispute arising out of or relating to this Agreement for purposes of this Part.

PART VI

Participating States, Effective Date and Amendment

24. Any State is eligible to become a Participating State. This Agreement shall become effective and binding as of the first day after the conclusion of the calendar quarter in which the Agreement is executed by the duly authorized representative of at least two (2) Participating

States. Thereafter, it shall become effective and binding as to any other Participating State as of the first day after the conclusion of the calendar quarter in which such State executes this Agreement.

25. Amendments may be proposed by any of the Participating States under this Agreement. The amendment shall become effective after two-thirds of the Participating States agree in writing to accept the amendment.

PART VII

Withdrawal, Default and Dissolution

26. Withdrawal

a. Once effective, this Agreement shall continue in force and remain binding upon each and every Participating State, provided that a Participating State may withdraw from the Agreement ("Withdrawing State") by providing 60 days' written notice to the Clearinghouse, which shall provide advance written notice to all Participating States and facilitate public notice of the State's withdrawal from the Agreement.

b. The Withdrawing State is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

27. Default

a. If any Participating State has at any time defaulted ("Defaulting State") in the performance of any of its obligations or responsibilities under this Agreement, the Defaulting State shall be suspended from the effective date of default. The grounds for default include, but are not limited to, failure of a Participating State to perform its obligations or responsibilities as required by this Agreement.

b. Reinstatement following termination of any Participating State requires renewed execution of the Agreement.

28. Dissolution of Agreement

a. The Agreement dissolves effective upon the date of the withdrawal or default of the Participating State that reduces membership in the Agreement to one Participating State.

b. Upon the dissolution of this Agreement, the Agreement becomes null and void and shall be of no further force or effect.

PART VIII

Severability and Construction

29. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of this Agreement shall be enforceable.

30. The provisions of this Agreement shall be liberally construed to effectuate its purposes.

31. Throughout this Agreement, the use of the singular shall include the plural and vice-versa. The headings and captions of parts, sections, subsections, paragraphs and sub-paragraphs used in this Agreement are for convenience only and shall be ignored in construing the substantive provisions of this Agreement.

PART IX

Binding Effect of Agreement and Other Laws

32. The terms of this Agreement, and the procedures to be established as amendments to this Agreement, are binding upon the Participating States, except as otherwise may be provided herein.

33. Each Participating State agrees to abide by the applicable laws, regulations, and statutes concerning confidentiality and nondisclosure of information to the extent required or allowed by law. This Agreement neither abrogates nor supersedes applicable Participating State laws respecting confidentiality, trade secrets and proprietary information.

PART X

Miscellaneous

34. This Agreement may be executed in any number of counterparts, each of which will constitute an original and all of which taken together will constitute one and the same instrument. Counterparts may be executed either by hard copy or electronically, or by facsimile, and the Participating States shall accept any signatures received by electronic mail or facsimile as original signatures of the Participating State. The Participating State will promptly forward to the other Participating States and the Clearinghouse a signed copy of this Agreement.

35. By entering into this Agreement, a Participating State is not deemed to surrender or abandon any of the powers, rights, privileges or authorities vested in it under its State constitution, statutes, acts, or otherwise, or to impair any of such powers, rights, privileges or authorities.

36. This Agreement, including all Annexes and the Exhibit attached, constitutes the entire agreement between the Participating States with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings between the Participating States with respect to that subject matter.

37. After execution of this Agreement, each Participating State will do, or cause to be done, all acts as the other Participating States may reasonably require from time to time for the purpose of giving effect to this Agreement and each Participating State will use reasonable efforts, and take all steps as may be reasonably within that Participating State's power, to implement to its full extent the provisions of this Agreement.

_____

[SIGNATURE OF STATE OFFICIAL]

ANNEX A
Nonadmitted Insurance Premium Tax Allocation Schedule

This Annex to the Agreement sets forth the provisions governing the method of tax allocation for Multi-State Risks, as specified in Part III. If the allocation schedule does not identify a classification appropriate to the property or risk being insured, then the Surplus Lines Licensee, or an insured who independently procures insurance, consistently shall use an alternative method of equitable allocation across similar types of insurance policies and contracts, and shall maintain for at least five years, documented evidence of the bases and other criteria used by the Surplus Lines Licensee or insured who independently procures insurance in order to substantiate the method.

EXPOSURE ALLOCATION METHODOLOGY

MAJOR COVERAGE	COVERAGE TYPE	INCLUDING	*ALLOCATION BASIS BY STATE
PROPERTY	ALL PROPERTY UNLESS MORE SPECIFICALLY DESCRIBED ELSEWHERE INCLUDES BOTH REAL AND PERSONAL PROPERTY, GLASS, CROP, ANIMALS, RESIDUAL VALUE	ALL RISK INCLUDING LEAKAGE OF SPRINKLERS, EXPLOSION, RIOT & CIVIL COMMOTION, EARTHQUAKE, BLANKET FORM, WATER DAMAGE, BUSINESS INTERRUPTION, TIME ELEMENT OR SIMILAR TIME VALUE COVERAGE, FIRE AND EXCESS OF LOSS	TIV (TIV= PD + BI) TOTAL INSURED VALUE = PHYSICAL DAMAGE + BUSINESS INTERRUPTION
	AVIATION	PHYSICAL DAMAGE, ALL OTHERS	TIV
	BOILER & MACHINERY	DIRECT, CONSEQUENTIAL, ENGINE & MACHINERY, ALL OTHERS	TIV
	INLAND MARINE	FINE ARTS DEALERS, JEWELERS BLOCK, FURRIERS BLOCK, BUSINESS & PERSONAL FLOATER, BUILDERS RISK, ALL OTHER NON APPEARANCE & ABANDONMENT	TIV
	INLAND MARINE	MOTOR TRUCK CARGO	GARAGE LOCATION
	MOTOR VEHICLE PHYSICAL DAMAGE		TIV OF MOTOR VEHICLES PRINCIPALLY GARAGED OR PRINCIPALLY USED IN STATES
CASUALTY	GENERAL LIABILITY / UMBRELLA / EXCESS	MANUFACTURERS AND CONTRACTORS	PAYROLL IN STATE

MAJOR COVERAGE	COVERAGE TYPE	INCLUDING	*ALLOCATION BASIS BY STATE
	LIABILITY	PREMISES OPERATIONS	SQUARE FOOTAGE OF PREMISES IN STATE
		OWNERS AND CONTRACTORS PROTECTIVE	COST OF CONTRACT IN STATE
		PRODUCTS	SALES IN STATE
		COMPLETED OPERATIONS	RECEIPTS IN STATE
		CHILD CARE	NUMBER OF CHILDREN IN STATE
		CONTRACTUAL	IF "STAND ALONE" POLICY, VALUE OF SALES IN STATE
		RECREATIONAL	AMOUNT OF GATE RECEIPTS IN STATE
		SPECIAL EVENTS	NUMBER OF EVENTS IN STATE
		PROFESSIONAL LIABILITY	NUMBER OF INSUREDS IN STATE
	ERRORS & OMISSIONS (E&O) / PROFESSIONAL LIABILITY		REVENUES (RECEIPTS) OR NUMBER OF PROFESSIONALS BY STATE
	MEDICAL MALPRACTICE	INCLUDES MEDICAL MALPRACTICE FOR INDIVIDUAL HEALTHCARE PROVIDERS OR FACILITIES, I.E. HOSPITALS, NURSING HOMES, PSYCHIATRIC CENTERS	REVENUES (RECEIPTS), NUMBER OF PROFESSIONALS OR BED COUNT BY STATE
CASUALTY (CONT'D)	EMPLOYMENT PRACTICES LIABILITY (EPLI)	EPLI FOR ALL INDUSTRIES	HEADCOUNT BY STATE
	MUNICIPALITIES, PUBLIC AUTHORITIES AND OTHER		NUMBER OF MUNICIPALITIES, ETC.

MAJOR COVERAGE	COVERAGE TYPE	INCLUDING	*ALLOCATION BASIS BY STATE
	POLITICAL SUBDIVISIONS		
	ENVIRONMENTAL IMPAIRMENT		NUMBER OF UNITS OF EXPOSURE
	ASBESTOS ABATEMENT		PAYROLL
	EMPLOYEE/MEMBER BENEFIT PROGRAM		NUMBER OF EMPLOYEES/MEMBERS
	MOTOR VEHICLE	AUTOMOBILE LIABILITY, EXCESS AUTOMOBILE LIABILITY	NUMBER OF MOTOR VEHICLES PRINCIPALLY GARAGED OR PRINCIPALLY USED IN STATES
	RAILROAD PROTECTIVE		MILES OF TRACK IN STATE
MARINE	VESSELS		PRINCIPAL BERTHING LOCATION
	ALL OTHER PROPERTY		TIV
AVIATION	AIRCRAFT	NON-OWNED AIRCRAFT, AIRCRAFT LIABILITY	HANGAR LOCATION
FINANCIAL RISK	DIRECTORS AND OFFICERS LIABILITY	GENERAL PARTNERSHIP LIABILITY	REVENUE GENERATED IN STATE
	SEC LIABILITY	UNAUTHORIZED TRADING	REVENUE GENERATED IN STATE
	KIDNAP & RANSOM		EMPLOYEES
	EXCESS SIPC		REVENUE GENERATED IN STATE
	MORTGAGE IMPAIRMENT		TIV
FINANCIAL RISK (CONT'D)	PATENT INFRINGEMENT		REVENUE GENERATED IN STATE
	SECURITIES	MAIL	TIV
	MEDIA LIABILITY		TIV

MAJOR COVERAGE	COVERAGE TYPE	INCLUDING	*ALLOCATION BASIS BY STATE
	SERVICE CONTRACTS/WARRANTIES		REVENUE GENERATED IN STATE
	TAX OPINION GUARANTEE		REVENUE GENERATED IN STATE
	INTELLECTUAL PROPERTY		REVENUE GENERATED IN STATE
CRIME	CRIME	BLANKET CRIME, FIDELITY BOND, INDIVIDUAL BOND, EMPLOYEE DISHONESTY, FORGERY, THEFT, ROBBERY, BURGLARY, FRAUD	EMPLOYEE COUNT
ACCIDENT AND HEALTH	ACCIDENT AND HEALTH	DISEASE, ACCIDENTAL INJURY OR DEATH, MEDICAL SURGICAL EXPENSES AND INCOME PAYMENTS	LOCATION OF EMPLOYEES OR CORPORATE HEADQUARTERS
CREDIT	CREDIT		VALUE OF INSURED DEBT IN STATE
FIDELITY & SURETY	PERFORMANCE BONDS		TOTAL BOND VALUE OF CONTRACTS IN STATE
	OTHER SURETY BONDS		TOTAL BOND VALUE OF CONTRACTS IN STATE

* U.S. PREMIUM ONLY

ANNEX B
Allocation Formula

For the purposes of this Annex and subject to Parts III, IV, and VII, the Nonadmitted Insurance premium tax revenue for a calendar tax year or for a sub-period of a calendar tax year, as the case may be, is the amount determined by the formula:

Tax Allocation = (Net tax due to each State/net tax due to all States) x Amount collected

Home State Net Taxes = (Taxes collected for the Home State + Taxes due from other Participating States) – Taxes owed to other Participating States

Total Premium Tax to be Collected on Each Multi-State Policy = (Home State's tax rate x Portion of premium allocated to Home State) + (Home State's tax rate x Premium allocated to Non-Participating State if insurer is nonadmitted in that State) + (Participating States' tax rate x Premium allocated to each Participating State if insurer is nonadmitted in that state)

Exhibit 1

Information Required to be Submitted By the Broker or Insured via the Clearinghouse Web Portal

A. Submission Contact

Name

Address

Phone Number

E-mail address

Independently procured policy? (Y/N)

B. Agency/Brokerage Firm Data

State

License Number

Name

Address

Phone Number

C. Agent/Sublicensee or Individual Licensee Data

State

License Number

Name

Office Address

Mailing Address

Phone Number

E-mail Address

D. Billing Contact

Name

Address

E-mail Address

Phone Number

E. Policy Data

Policy Number/Binder Number if Policy Number is not available

Effective Date

Expiration Date

Insured Name

Home State of Insured

F. Transaction Data

NAIC Insurer Code Number(s)

Insurer Name(s)

Total Policy Premium by Insurer(s)

Coverage Code

Tax Status

Transaction Type (New, Renewal or Endorsement)

Allocation among States:

Allocation Method

Premiums Allocated to Each State