WSIA Guidelines for Uniform State-Based Regulatory Requirements of the Surplus Lines Market

WHOLESALE & SPECIALTY INSURANCE ASSOCIATION

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The surplus lines insurance market provides coverages and capacity that are crucial to the national insurance market. With years of sophisticated underwriting experience and highly-stable, proven financial solvency records, the market acts as both a safety-valve and incubator for hard-to-place, unique and emerging risks and ensures these risks are maintained in the private market.

Surplus lines insurance operates most effectively in a state-based system of regulation. As consumers' needs become more complex, and reliance on the surplus lines market increases, so does the need for efficient and uniform regulation for surplus lines transactions. The Nonadmitted and Reinsurance Reform Act (NRRA) sought to achieve a simpler and more efficient system of regulation and taxation of the industry by establishing the "home state" as the only jurisdiction to regulate and tax surplus lines transactions. State implementation of the following regulatory requirements will maintain the intent of the NRRA and establish a uniform, nationwide approach to the regulation and taxation of the surplus lines industry.

The uniformity brought about by the home state tax approach should be implemented in other regulatory requirements to enhance the already effective system. WSIA members seek to maintain individual state based regulation with nationwide uniform treatment of the following regulatory compliance requirements.

I. Taxation and insurer eligibility in the insured's home state

The NRRA provides a consistent, uniform structure for the regulation and taxation of a surplus lines insurance policy, where the insured's home state is the exclusive jurisdiction to regulate and tax the policy. While all states recognize and regulate the surplus lines transaction under the NRRA, not all provisions are uniformly applied.

A. Taxation

1. Home state of the insured

Determination of an insured's home state should be made exclusively as defined in the NRRA for all surplus lines policies. When the insured is a member of an unaffiliated group, the home state should be the state in which the group is domiciled.

2. Risks located outside of the United States

Surplus lines premium taxes should only be collected for risks that reside within the United States. A state should exclude any portion of risk that is outside of the U.S. in determination of the amount of surplus lines tax to be collected. If 100% of a U.S. insured's policy resides outside of the United States, the state should not collect surplus lines premium tax.

3. Home state tax calculation

Surplus lines premium tax should be calculated by taxing 100% the premium based on the tax rate and rules of the insured's home state.

4. Taxable premium

States should implement one uniform definition of "premium tax" for determining taxable premium so that surplus lines premium taxes are calculated and treated uniformly. A consistent definition would ensure a more efficient process for consumers, states and the industry.

B. Insurer Eligibility

Strong solvency review by domiciliary states for U.S. surplus lines carriers, and by the NAIC International Insurers Department (IID) and its members for non-U.S. surplus lines carriers, is critical to the continued success of the surplus lines marketplace. U.S. domestic and non-U.S. carriers should have the same standard for doing business and demonstrate strong solvency history to support a robust surplus lines industry. All U.S. insureds purchasing surplus lines coverage should feel confident in the strength and solvency of the surplus lines market. Industry and consumers alike benefit from strong carrier solvency.

1. Eligibility criteria

Surplus lines insurers should be deemed eligible in any state where they meet the insurer eligibility provision of the NRRA.

2. Mandatory eligibility criteria and listings

Mandatory eligibility listings and criteria exceeding those set by the NRRA conflict with the NRRA and should be suspended.

3. Voluntary eligibility criteria and listings

States may maintain voluntary listings of eligible surplus lines insurers, where the insurer elects to provide additional information beyond the criteria in the NRRA. States implementing voluntary listings with additional solvency review should be limited to information readily available through the domiciliary state or NAIC database. No additional information beyond data collected for domiciliary state solvency regulation should be required.

II. Tax payment dates

A. States should choose an annual, biannual or quarterly requirement for the "due by" date for surplus lines premium tax. The required dates should be limited to four potential dates throughout the year, including the first day of March, June, September or December. States may require estimated quarterly tax payment for three dates and a "true up" or "final" on the fourth date. States should continue to accept payments on a monthly basis and should not limit when a payment can be remitted.

III. Treatment of surplus lines fees

A. Surplus lines broker policy fees

A surplus lines broker should be allowed to charge a reasonable fee for the placement of a surplus lines policy as recognition for services performed as part of securing a surplus lines policy from a nonadmitted carrier that are unique to the surplus lines transaction. The fee should be made transparent to the consumer.

B. Surplus lines policy fees taxation

While we believe surplus lines policy fees are not premium and should not be subject to surplus lines premium tax, states should clearly indicate if taxes are to be applied to surplus lines policy fees.

IV. Elimination of zero premium reporting

A. Brokers should not be required to report to a state that they have collected zero dollars in premium during a period they maintain an active surplus lines license. These reports are obsolete because the pre-NRRA system requiring the broker to remit a portion of the tax to each exposure state has now been eliminated.

V. Electronic Distribution of Insurance Materials and Payments

A. States should accept all required reports and filings electronically. In states unable to immediately implement electronic filing, the electronic and hard-copy form should be the same.

B. States should allow surplus lines premium tax payments through electronic means.

C. Electronic and digital signatures should be permitted by all states to acknowledge agreement, acceptance and notice for any documentation required of an insurer, producer or insured.

D. Electronic notification to an insured by an insurer or producer should be permitted by all states.

E. All states should permit electronic or digital notarization.

VI. Forms

A. Diligent effort recordings (affidavits)

If required by a state, a record of diligent effort should be maintained in a surplus lines broker's file and available to the state upon request or during an audit. It should not be necessary to notarize or file these records with a state.

B. Premium reports

States should implement one uniform form and report format for use by all states for purposes of reporting and remitting surplus lines premium tax.

VII. Automatic Export

Implementing uniform processes and procedures and increasing state reliance upon Export Lists is desired. Export lists are an efficient and effective way for risks to enter the surplus lines market but are currently only utilized by 18 states. Commissioners should be made aware when there is not an adequate standard market and s/he should have the ability to designate that risk for automatic export in order to ensure the greatest efficiency for her/his consumers and the overall insurance market. In the absence of Export Lists, statutory declarations for automatic export are desired (e.g., exemption from diligent effort for private flood insurance placements).

VIII. Notice to Insureds

A. States should require one, uniform notice to surplus lines insureds, in the same font size and color, with the same required information.

"This insurance policy is permitted to be placed in this state on a nonadmitted basis by an insurer meeting the criteria within [insert insured's home state surplus lines code section]. The insurer is not licensed in this state and does not participate in the State Guaranty Fund. For additional information about this insurer, contact your insurance general agent, broker or surplus lines broker. You may also contact your insurance department consumer help line."