



**STATE OF WEST VIRGINIA**  
**OFFICES OF THE INSURANCE COMMISSIONER**  
**REQUEST FOR PUBLIC COMMENTS REGARDING**  
**SURPLUS LINES EXPORT LIST**

NOTICE IS HEREBY GIVEN that the Insurance Commissioner of the State of West Virginia is soliciting comments regarding the surplus lines export list. All comments must be submitted as noted below:

**September 21, 2020, 5:00 p.m.**

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Offices of the Insurance Commissioner  
900 Pennsylvania Avenue, 8<sup>th</sup> Floor  
Charleston, WV 25302

Pursuant to W.Va. Code of State Rules §114-20-7, the Insurance 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. The export list, if maintained, may be published at least annually but may be revised and republished at any time.

Any person may request in writing that, at the next publication of the export list, the Insurance 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. Accordingly, prior to the 2020 re-publication of the export list, the Insurance Commissioner is soliciting public comments. The deadline for comments is **September 21, 2020, at 5:00 p.m.**, as noted above. Please be aware that items not appearing on this list may still be exportable but subject to the full documentation of the search being performed pursuant to W. Va. Code §33-12C-5.

Insurance coverages and classes included on the export list may be placed with surplus lines insurers without completing a diligent search of admitted carriers. The Insurance Commissioner may declare eligible for placement with a non-admitted insurer and exempt from all the requirements of W.Va. Code of State Rules §114-20-3, any type of insurance coverage or risk for which he or she finds, after consideration, that there is not a reasonable or adequate market among admitted insurers. The Insurance Commissioner may consider the following in determining the insurance coverages and classes to be listed: the current marketplace, information from the surplus line licensees, information from admitted and surplus lines insurers doing business in West Virginia, information from other sources, including producers and consumers, and any other information the Insurance Commissioner deems relevant.

The Insurance Commissioner has previously collected information on whether there is a reasonable or adequate market among admitted insurers for certain risks or coverages. The agency reviewed the export lists in other states and previously contacted West Virginia surplus line brokers and surveyed them as to the risks most placed by them. We received industry input from admitted carriers. We also have held public hearings and solicited public comment from all interested parties including surplus line brokers, admitted insurers,

trade associations representing admitted insurers, agents and brokers, and consumer groups to provide us with evidence of a lack of a reasonable or adequate market amongst admitted carriers for particular risks or coverages. The current surplus lines export list is published on the Insurance Commissioner's website at [www.wvinsurance.gov](http://www.wvinsurance.gov), and is also attached hereto.

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

**Issued: August 21, 2020**





**STATE OF WEST VIRGINIA**  
**Offices of the Insurance Commissioner**  
**Company Analysis and Examinations Division**

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**West Virginia Surplus Lines Export List**

Pursuant to Section 7, Series 20, Title 114 of the West Virginia Code of State Rules, the Insurance Commissioner declares the following insurance coverages to be generally unavailable in the authorized market at the present, and thus exportable, and adopts the following export list. Accordingly, for those insurance coverages which are included on the export list, a diligent search among insurers admitted to do business in this State is not required before placement of the coverages in the surplus lines market.

The export list is not exclusionary. It does not affect what may or may not be placed through surplus lines insurers. It is a procedural tool. For those items on the list some of the procedures for surplus lines placements are eliminated - simplifying the process. If a coverage or class is included on this list the diligent search of admitted insurers is not required. If a coverage or class is not included on the list, the normal diligent search will still be necessary.

It is not the purpose of the export list to include every possible surplus lines exposure. The purpose is to list obvious coverages and classes that in almost every case will only be written by a surplus lines company. If a coverage or exposure is not on the list it may still be written through surplus lines if the procedures of Section 4, Series 20, Title 114 of the West Virginia Code of State Rules are followed.

Following is the published West Virginia Surplus Lines Export List of coverages and classes eligible for export to non-admitted insurers participating in the surplus lines market:

Effective: October 1, 2019

**Agriculture**

- Hay in open or barn
- Drought
- Animal Mortality
- Poultry

**Amusements**

- Amusement Parks and their Devices
- Animal Rides / Animal Racing & Tracks
- Balloon (Hot Air)
- Go Kart Tracks / Motorcross Tracks
- Guides / Outfitters
- Rafting (White Water)
- Recreational and Sporting Events
- Special Short Term Events
- Skating Rinks (Roller / Ice / Skateboard / Roller Blade)
- Ski Lifts and Tows
- Spectator Liability

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Assisted Living  
     Group Homes  
     Nursing Home Liability with or without other Affiliated Elder Care Services  
 Aviation  
     Fixed Base Operations  
 Building  
     Demolition  
     Moving or Raising  
 Chemical Spray and/or Drift  
 Contractors  
     Blasting  
     Crane and Rigging (liability and physical damage only)  
     Demolition Liability  
     Excavation  
     Pollution Liability & Remediation  
 Crop Dusters (aircraft liability and aircraft hull coverage only)  
 Day Care Centers Liability, including Sexual Abuse Coverage  
 Explosive Manufacturing / Storage / Sales / Distribution  
 Fire Suppression / Alarm Systems — Installation, Service & Repair  
 Firearms (Sales / Distribution / Repair)  
 Firework Sales  
 Flood Insurance  
 Fuel and Explosive Haulers (excess Auto liability and auto physical damage only)  
 Hazardous Waste Haulers (excess Auto liability and auto physical damage only)  
 Hazardous Waste Storage and Disposal (liability only)  
 Health / Exercise / Spa / Fitness Club Centers  
 Hunting Clubs  
 Kidnapping, Ransom and Extortion Insurance  
 Liquor Liability (monoline)  
 Loggers  
 Logging Equipment  
 Medical Malpractice Liability excluding the Physicians (with or without related General Liability Coverages)  
 Mining  
 Mining Equipment (Manufacturing / Installation / Service / Repair)  
 Product Liability / Recall (monoline) for the Manufacturing of:  
     Aircraft and Component Parts  
     Automotive and Component Parts  
     Farm and Industrial Equipment  
     Firearms  
     Medical Equipment  
     Petrochemicals  
     Pharmaceuticals

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Railroad, including Consultants, Contractors, and Suppliers  
Real-Estate Environmental Impairment Coverage  
Rehabilitation Centers & Programs (Alcohol / Drug)  
Remediation (Lead Paint / Asbestos / Environmental)  
Sawmills / Planing Mills  
Security / Detective / Patrol Agencies  
Tavern / Bar / Private Clubs / Fraternal or Social Clubs with Alcohol  
Taxicab Liability  
Trucks  
    Coal Hauling  
    Logging  
    Long Haul  
Underground Equipment (Oil & Gas, Tunneling, Drilling)  
Vacant Properties

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## The Surplus Lines Market

The surplus lines market, hereafter referred to as surplus lines, is a supplemental market of insurance companies that do not have a certificate of authority to write insurance in West Virginia. Laws and regulations provide a mechanism to control the surplus lines brokers' "export" of business to recognized non-admitted insurers. Though specifics may differ, there is a consistency in the basic framework of surplus lines laws throughout the various states. The prohibition against soliciting business on behalf of nonadmitted insurers is universal, as well as the requirement that there be a diligent, good faith effort to place the insurance with an admitted insurer. Documentation and justification of the surplus lines placement is always required. Restrictions on using surplus lines for the purpose of price advantage and restrictions on exporting different layers or segments of a risk are common. Several states use an export list of insurance coverages and classes. Some states have exemptions for larger insureds. West Virginia surplus lines rules and procedures are consistent with most other states in these areas.

## Frequently Asked Questions

### What is your surplus lines tax rate?

- 4.55% of gross premiums and gross fees charged less return premiums due to cancellations or premium reductions. Gross premiums include all policy fees. The 4.55% is broken out as Surplus Lines Tax (88% of 4.55%) and Surcharge Payable (12% of 4.55%).

### Is there a stamping fee?

- No. West Virginia does not have a stamping office.

### Can non-residents obtain a surplus lines brokers license?

- Yes. West Virginia has a non-resident surplus lines licensee's license. For more information, the website is located at: <http://www.wvinsurance.gov/Default.aspx?tabid=306>

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## Statutes and Regulatory Rules Applicable to Surplus Lines

Current statutes and regulations are as follows:

### Statutory Provisions

Article 12C Chapter 33, West Virginia Code

Article 43 Chapter 33, West Virginia Code

### Regulatory Rules

Procedures for Surplus Lines Placement:

W.Va. Code of State Rules, Title 114, Series 20, Section 4

Surplus Lines Premium Tax Procedures:

W.Va. Code of State Rules, Title 114, Series 20, Sections 5 & 6

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