

Memorandum of Understanding and Data Sharing Agreement
Between
The Washington State Office of Insurance Commissioner
And
The Surplus Line Association of Washington

1. Introduction

This Memorandum of Understanding and Data Sharing Agreement (MOU) is entered into by the Washington State Office of Insurance Commissioner (OIC) and the Surplus Line Association of Washington (Association). It is subject to, and controlled by, applicable laws of the state of Washington.

OIC regulates the business of insurance in the state of Washington and has supervisory and regulatory responsibility over those persons and entities engaged in the business of insurance in the state of Washington, or affecting subjects located wholly or partially within the state of Washington. The Association is a nonprofit corporation formed, in part, to encourage and facilitate compliance by its member brokers with the laws of the state of Washington relative to surplus line insurance transactions, and with the rules and regulations of the OIC relative to surplus line insurance.

2. Definitions

Party or Parties: The Washington State Office of Insurance Commissioner and the Surplus Line Association of Washington, individually or together.

RAPID: Regulatory Administration Platform of Insurance Data.

Requesting Party: Whichever Party requests information or data above and beyond what is specified in the Scope of cooperation.

Responding Party: Whichever Party provides information or data above and beyond what is specified in the Scope of cooperation.

SLIP: Surplus Lines Information Portal that provides the ability for Association member brokerages and their representatives to electronically submit and review surplus lines policy data.

3. Purpose

The purpose of this MOU is to promote cooperation between the Association and OIC and to memorialize the respective duties and responsibilities held by the Association and OIC in connection with implementing the statutory requirements of Chapter 48.15 RCW and Chapter 284-15 WAC.

4. Scope of cooperation

A. Filing of certifications under RCW 48.15.040.

a. The Association serves as the initial recipient of surplus line certifications required to be filed with OIC under RCW 48.15.040(5) and WAC 284-15-030. A surplus line certification is required for each procurement of insurance pursuant to 48.15.040(5). The OIC acknowledges that the Association does not review the certifications for truthfulness, accuracy, or validity, and that the Association only verifies that the members properly and fully complete the certifications. Fully completed means all sections of the certification are filled out.

l. In the case where Lloyd's of London is the unauthorized insurer, the Association agrees to provide a list of syndicate numbers upon OIC request.

b. The Association will provide the certifications to the OIC in an Adobe .pdf format, and provide the Tax Detail Report, as currently formatted, or all premium activity including information as required on the certification form, in an Excel workbook format (.xlsx or .csv), at least monthly pursuant to RCW 48.15.040(c).

B. The reporting of premiums under RCW 48.15.110.

a. Pursuant to RCW 48.15.110(1), on or before March 1 of each year, each surplus line broker must file with the commissioner a verified statement of all surplus line insurance transacted by him or her during the preceding calendar year. As a service to its members, by February 1 of each year, the Association will provide each of its members with information available from Association records regarding the amount of premium certified in SLIP by class during the previous calendar year by each member. It is understood that this information is received by the Association, reported on surplus line certifications as required by 48.15.040, and provided to brokers via the OIC's online Filing and Payment Center solely for purposes of assisting brokers in making their required report of premiums by the March 1 deadline.

- b. The Association will provide brokers, via the OIC's Online Filing and Payment Center, information to complete the amendment of prior year reports of premiums when late filings of premiums are entered into SLIP.

5. Right of Inspection

The Association shall provide the OIC, or personnel designated by OIC, right of access to its systems and facilities at all reasonable times in order to monitor and evaluate performance, compliance, and/or quality assurance under the Purpose section of this Memorandum. All inspections and evaluations shall be performed in such a manner that will not unduly interfere with the Association's business.

6. Classification of data

Parties acknowledge that some of the material and information exchanged in the performance of this MOU may consist of Public Information, Sensitive Information, Confidential Information, and/or Confidential Information Requiring Special Handling as defined below.

Public Information: information that can be or currently is released to the public. It does not need protection from unauthorized disclosure, but does need integrity and availability protection controls.

Sensitive Information: information that may not be specifically protected from disclosure by law, but is for official use only. Sensitive information is generally not released to the public unless specifically requested.

Confidential Information: information that is specifically protected from disclosure by law. Confidential Information includes: personal information about individuals, such as financial account information, regardless of how that information is obtained; information concerning employee personnel records; information regarding IT infrastructure and security of computer and telecommunications systems.

Confidential Information Requiring Special Handling: information that is specifically protected from disclosure by law and for which especially strict handling requirements are dictated, such as by statutes, regulations, or agreements; or serious consequences could arise from unauthorized disclosure, such as threats to health and safety, or legal sanctions.

Information exchanged under this contract may be *Confidential*.

7. Terms and conditions of data access and use

- A. All requests for additional information not stated in the Purpose of this MOU shall be submitted in writing by the Requesting Party. Each request shall identify the Regulated Person or Entity, the relevant time period, and any other relevant description of the type or types of information being requested. The Responding Party shall reply to the Requesting Party as soon as practicable upon receipt of the request.
- B. In the event the information and records responsive to a request include Confidential Information, the Responding Party shall include in its response the fact that Confidential Information is included, the nature or type of Confidential Information included, and sufficient detail for the Requesting Party to identify and locate the Confidential Information in the responsive documents.
- C. The Requesting Party shall take all actions reasonably necessary to preserve, protect and maintain all privileges and claims of confidentiality related to Confidential Information received pursuant to this MOU, in accordance with applicable law.
- D. Confidential Information provided by the Responding Party will not be duplicated or re-disclosed to any person except as provided in section 8 of this MOU.
- E. Any unauthorized access, use or disclosure of Confidential Information shall be immediately reported to the Party that supplied the information.
- F. Unauthorized access, use or disclosure of Confidential Information may be grounds for terminating this MOU.

8. Physical safeguards

The Parties agree to the following minimum safeguards for any Confidential Information provided pursuant to this MOU:

- A. Access to Confidential Information will be restricted to only those authorized personnel who need it to perform their official duties, including but not limited to agents, employees and experts who may be retained by the Parties. Parties will take precautions to ensure that Confidential Information is not accessible to unauthorized personnel.

- B. Confidential Information will be stored in areas that are safe from access by unauthorized persons during regular business hours as well as non-business hours or when not in use.
- C. Confidential information will be protected in a manner that prevents unauthorized persons from retrieving the information by means of computer, remote terminal or other means.
- D. Any electronic transfer of records, files, or data that consist of Confidential Information classified as either Category 3 or 4 data under Washington's OCIO Standards No. 141.10 shall be encrypted.
- E. Each Party shall instruct all authorized personnel regarding the confidential nature of the information shared pursuant to this MOU, the appropriate procedures for maintaining confidentiality, and the requirements of this MOU.

9. Re-disclosure of information

- A. Except as expressly provided in this MOU, re-disclosure of Confidential Information received by either Party pursuant to this MOU to third parties is prohibited unless the Responding Party agrees to the disclosure in writing.
- B. Both parties assert that they have the authority to maintain the confidentiality of Confidential Information consistent with RCW 48.02.065(5).
- C. Confidential Information may be disclosed to the NAIC, other state insurance regulators, or other state and federal regulators, to the extent such entities assert that they have the authority to maintain the confidentiality of the Confidential Information, and agree to do so.
- D. In the event either Party receives a public records request for Confidential Information, it will assert all applicable exemptions found in the Public Records Act, chapter 42.56 RCW, RCW 48.02.065, or other applicable laws to protect Confidential Information from disclosure.
- E. In the event either Party receives a subpoena, order, or other process requiring production of Confidential Information or testimony related thereto, it will assert all applicable exemptions found in RCW 48.02.065, or other applicable laws to protect Confidential Information from production.

- F. In the event either Party is sued for improperly asserting an exemption from disclosure, it shall bear its own costs for such litigation.
- G. If, for any reason, a Requesting Party does not assert an exemption or objection to production of Confidential Information, it must:
1. Immediately notify the Responding Party of the nature and substance of the disclosure or production being sought,
 2. Notify the third party requesting records or production that it needs a minimum of 30 business days to produce the records because of the time needed to:
 - a. Review the records;
 - b. Allow time for time to contact the Responding Party, the regulated entity the records pertain to, and any individuals whose information is contained in the Confidential Information, to inform them that their information is responsive to a public records request or other legal process seeking production; and
 - c. Allow anyone who may be affected by the disclosure to object or seek injunctive relief.
 3. Contact all individuals, companies, and parties whose information is included in the responsive records that their information that has been requested.
 4. Cooperate fully with the Responding Party's efforts to object to disclosure of Confidential Information, including consenting to the Responding Party's request to intervene or appear in any action for the purpose of preserving the confidentiality of the Confidential Information.
- G. Any Party may comply with an order from a court of competent jurisdiction to disclose Confidential Information. The Party receiving such an order will notify the Responding Party as promptly as is reasonably possible of such an order.
- H. No sharing of Confidential Information under this Agreement or compulsory disclosure to third parties of confidential information exchanged under this Agreement shall be deemed a waiver of any privilege or claim of confidentiality, except as expressly found by a court or judicial authority of competent jurisdiction.

10. Period of performance

This MOU shall commence on the date of execution and shall continue until terminated by either Party as provided herein. As long as either Party has Confidential Information in its custody, the requirements imposed on both parties concerning the maintenance of data and records shared pursuant to this MOU shall continue until the records retention period for such data and records is concluded, and those data and records are destroyed.

11. Agreement management

OIC MOU Manager

Name: Jeff Baughman
Title: Licensing and Education Manager
Address: 5000 Capitol Blvd. SE
Tumwater, WA 9850
Telephone: 360/725.7156
Email: JeffB@oic.wa.gov

Association MOU Manager

Name: Robert R. Hope
Title: Executive Director
Address: 1710 One Union Square
600 University Street
Seattle, WA 98101
Telephone: 206/682.3409
E mail: Bob@surpluslines.org

12. Records maintenance

Once any investigative or enforcement action is concluded, the Requesting Party will return any Confidential Information received from the Responding Party, and such Confidential Information will remain in the sole custody of the Responding Party. Both parties shall otherwise retain all records, books or documents related to this MOU for the full term required by applicable public records retention schedules. Both parties agree to maintain Confidential Information in a manner consistent with this MOU, until such records have reached their retention period, and are appropriately disposed of.

13. Indemnification

Each Party shall be responsible for any negligence or conduct attributable to its own employees in the performance of this MOU, or leading to breach of this MOU.

14. Disputes

In the event of an inconsistency in this MOU, unless otherwise provided, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal and State Statutes and Regulations;
2. Terms and Conditions as contained in this MOU;
3. Any other amendments or provisions of this MOU;

4. Any other provision, term or material incorporated herein by reference or otherwise incorporated into this contract by operation of law.

Except as otherwise provided in this MOU, when a dispute arises between the Parties and it cannot be resolved by direct negotiation, the Parties agree to participate in mediation in good faith. The mediator shall be chosen by agreement of the Parties. If the Parties cannot agree on a mediator, the Parties shall use a mediation service that selects the mediator for the parties.

15. Severability

If any provision of this MOU or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this MOU which can be given effect without the invalid provision, and to this end the provisions of this MOU are declared to be severable.

16. Termination

This Memorandum shall remain in effect until terminated. Either the Association or the OIC may terminate this Memorandum upon ninety (90) days written notice. Termination shall not affect the rights, duties, or obligations of the Association, its members, or the OIC with respect to complying with laws of the state of Washington and the provisions of Title 48 RCW and Title 284 WAC.

17. Amendments and modifications

This MOU may be waived, changed, modified, or amended only by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

18. Jurisdiction

This MOU shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any legal action pertaining to this MOU shall be the Washington State Superior Court for Thurston County unless the Parties agree in writing to another venue.

19. Entire Memorandum

This Memorandum, supersedes, and otherwise replaces, all other existing memoranda, agreements, understandings, or representations, whether oral or written, between the signatories to this Memorandum. No waiver, alteration or modification of the provisions in this Memorandum shall be binding unless subsequently made in writing and signed by a duly authorized representative of the Association and the OIC.

20. Nonbinding obligation

This Memorandum, supersedes, and otherwise replaces, all other existing memoranda, agreements, understandings, or representations, whether oral or written, between the signatories to this Memorandum. No waiver, alteration or modification of the provisions in this Memorandum shall be binding unless subsequently made in writing and signed by a duly authorized representative of the Association and the OIC.

21. Approval

This MOU, consisting of nine (9) pages, is executed by the persons signing below, who warrant they have the authority to execute this MOU.

By signing this MOU, both parties certify that their policies, procedures, and authority comply with the confidentiality requirements of this MOU.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding and Data Sharing Agreement.

Surplus Line Association of Washington

Office of Insurance Commissioner

Robert Hope
Signature

Melanie Anderson
Signature

Robert Hope
Name (Please Print)

Melanie Anderson
Name

Executive Director
Title

Deputy Commissioner
Title

7/17/19
Date

7/17/19
Date