



Department of Business Regulation
Insurance Division
1511 Pontiac Avenue, Bldg. 69-2
Cranston, Rhode Island 02920

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Surplus Lines Insurance in Rhode Island

The purpose of this bulletin is to outline nationwide regulatory changes that will affect the placement of nonadmitted insurance in Rhode Island. The Nonadmitted and Reinsurance Reform Act of 2010 (“NRRA”), 15 U.S.C. § 8201 *et seq.*, provides that only an insured’s “Home State” may require the payment of premium tax for nonadmitted insurance. Moreover, the NRRA subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured’s Home State, and provides that only the insured’s Home State may require a surplus lines broker to be licensed to sell, solicit or negotiate nonadmitted insurance with respect to such insured. 15 U.S.C. § 8202(a), (b). “Nonadmitted insurance” applies only to property and casualty insurance (excluding workers’ compensation). 15 U.S.C. § 8206(9) and R.I. Gen. Laws § 27-3-38.

The NRRA became effective on July 21, 2011. The following information is provided for the benefit of insurers, brokers and insureds:

What is the scope of the NRRA?

The NRRA states that “the placement of nonadmitted insurance is subject to the statutory and regulatory requirements solely of the insured’s home state” and that the NRRA “may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers’ compensation insurance or excess insurance for self-funded workers’ compensation plans with a nonadmitted insurer.” 15 U.S.C. § 8202. The NRRA does not expand the scope of the kinds of insurance that an insurer may write in the nonadmitted insurance market and each state continues to determine which kinds of insurance an insurer may write in that state. Although the NRRA preempts certain state laws with respect to nonadmitted insurance, it does not have any impact on insurance offered by insurers licensed or authorized in this state.

What are the eligibility requirements for nonadmitted insurers?

For nonadmitted insurers domiciled in a U.S. jurisdiction, a broker is permitted to place nonadmitted insurance with such insurers provided they are authorized to write such business in their state of domicile and maintain minimum capital and surplus of \$15 million in accordance with 15 U.S.C. § 8204.

In accordance with the Nonadmitted and Reinsurance Reform Act of 2010 any U.S. domiciled surplus lines insurer that intends to write risks located in Rhode Island shall submit the following to the Department.

1. Certificate of Authority from the insurers domiciliary state evidencing that the insurer is authorized to write such business in its domiciliary jurisdiction;
2. Confirmation of its Capital and Surplus from its most recent Annual and/or Quarterly Statements;
3. Furnish appointment of a surplus lines broker or another individual who is a resident of this state as [agent for service of process](#). Also, please provide the address where this individual may be served along with a copy of a letter which indicates that the individual has agreed to act in this capacity in accordance with [R.I. Gen. Laws § 27-3-41](#);
4. An application fee of \$100 made payable to “General Treasurer, State of Rhode Island.”
5. Completion of the [Rhode Island Information Questionnaire](#).

Upon confirmation of the above information, the insurer will be added to the Rhode Island Approved Surplus Lines Insurer list for purposes of [R.I. Gen. Laws § 27-3-40](#). Any insurer with a pending application that has not included the above referenced information should file the information indicated above immediately. If any of the information provided is amended or changed the insurer should notify the Department within thirty (30) days of that change.

For nonadmitted insurers domiciled outside the U.S., a broker may place business with such insurers provided the insurer is listed on the [Quarterly Listing of Alien Insurers](#) maintained by the International Insurers Department of the NAIC.

What are the license requirements for brokers?

Only the insured’s Home State may require a surplus lines broker to be licensed to sell, solicit or negotiate nonadmitted insurance with respect to a particular placement. If Rhode Island is the insured’s Home State, the surplus lines broker must be licensed in Rhode Island. The NIRA provides that Rhode Island may not collect licensing fees for surplus lines brokers as of July 21, 2012, unless Rhode Island participates in the NAIC’s national insurance producer database or any other equivalent uniform national database. 15 U.S.C. § 8203. Rhode Island participates in the National Insurance Producer Registry (NIPR), which provides such a database and will, therefore, continue to collect license fees for surplus lines brokers.

What is the insured’s Home State for purposes of a particular placement?

Rhode Island is the insured’s Home State if the insured maintains its principal place of business here or, in the case of an individual, the individual’s principal residence is here. If Rhode Island

is considered the insured's Home State, only Rhode Island requirements regarding the placement of such business will apply. If 100% of the insured risk is located outside of Rhode Island, then the insured's Home State is the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

If more than one insured from an affiliate group are named insureds on a single nonadmitted insurance placement, Rhode Island will be considered the Home State for that placement if Rhode Island is the Home State of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

How will these rules be applied?

New and renewal policies with an effective date on or after July 21, 2011, and any modifications thereto, will be subject only to the laws and regulations of Rhode Island if Rhode Island is the Home State of the insured.

For all policies subject to Rhode Island law, every application form, affidavit, and policy (on its front and declaration pages) shall contain in accordance with [R.I. Gen. Laws § 27-3-38](#) the following notice in ten (10) point type:

NOTICE

THIS INSURANCE CONTRACT HAS BEEN PLACED WITH AN INSURER NOT LICENSED TO DO BUSINESS IN THE STATE OF RHODE ISLAND BUT APPROVED AS A SURPLUS LINES INSURER. THE INSURER IS NOT A MEMBER OF THE RHODE ISLAND INSURERS INSOLVENCY FUND. SHOULD THE INSURER BECOME INSOLVENT, THE PROTECTION AND BENEFITS OF THE RHODE ISLAND INSURERS INSOLVENCY FUND ARE NOT AVAILABLE.

What are the requirements for premium tax allocation and payment in Rhode Island?

As of July 21, 2011, the NRRRA permits only the insured's Home State to require the payment of premium tax for nonadmitted insurance. It is the intent of the Department to issue additional bulletins if and when Rhode Island begins participating in a tax sharing arrangement. Until additional bulletins are issued, the Rhode Island tax rate of 4% in accordance with [R.I. Gen. Laws § 27-3-38\(e\)](#) and [R.I. Gen. Laws § 27-3-38.1](#) should be applied to new and renewal policies with an effective date on or after July 21, 2011, when Rhode Island is the insured's Home State.

What are the requirements for a diligent search and when is a diligent search not required?

For all policies subject to Rhode Island law affidavits setting forth facts showing that the insured or a licensed Rhode Island producer were unable, after diligent effort, to procure from no less than three (3) authorized insurers the full amount of insurance required to protect the property owned or controlled by the insured or the risks insured must be executed. The form of affidavit is provided by [230-RICR-20-50-1](#) (formerly Insurance Regulation 11). The affidavit is not required when insuring the following

interest: amusement parks and devices, environmental improvement and/or remediation sites, vacant property or property under renovation, demolition operations, event cancellation due to weather, railroad liability, discontinued products, fireworks and pyrotechnics, warehouseman's legal liability, excess property coverage, and contingent liability. The affidavit is not required for policies renewed, continued or extended by the same insurers for which the broker has previously completed an affidavit. For purposes of this section, residual market mechanisms shall not be considered authorized insurers.

A surplus lines broker seeking to procure or place nonadmitted insurance on behalf of an "exempt commercial purchaser" is not required to perform a diligent search if: 1) the broker has disclosed to the exempt commercial purchaser that insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and 2) the exempt commercial purchaser has subsequently requested in writing for the broker to procure or place such insurance from a nonadmitted insurer.

The term "exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months.

(C) (i) The person meets at least 1 of the following criteria:

(I) The person possesses a net worth in excess of \$22,040,000.

(II) The person generates annual revenues in excess of \$55,100,000.

(III) The person 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 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$33,060,000.

(V) The person is a municipality with a population in excess of 50,000 persons.

What are the key definitions from the NRRA?

The NRRA includes several definitions relevant to Rhode Island's implementation of its requirements. Key definitions include the following:

- "Home State":

(A) In General.—Except as provided in subparagraph (B), the term "home State" means, with respect to an insured—

(i) 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

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

(B) Affiliated Groups.—If more than 1 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 the member of the affiliated group that has the

largest percentage of premium attributed to it under such insurance contract. 15 U.S.C. § 8206(6).

- **“Independently procured insurance”**: The term “independently procured insurance” means insurance procured directly by an insured from a nonadmitted insurer. 15 U.S.C. § 8206(7).

- **“Nonadmitted insurance”**: The term “nonadmitted insurance” means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance. 15 U.S.C. § 8206(9).

- **“Nonadmitted insurer”**: The term “nonadmitted insurer”—
(A) means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State; but
(B) does 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)). 15 U.S.C. § 8206(11).

- **“Premium tax”**: The term “premium tax” means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance. 15 U.S.C. § 8206(12).

- **“Qualified risk manager”**: The term “qualified risk manager” means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third-party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

(i) (I) has a bachelor’s degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management; and

(II) (aa) has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(bb) has—

(AA) a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as “CPCU”) issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;
(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or
(EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

- (ii) (I) has at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and
- (II) has any 1 of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);
- (iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or
- (iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management. 15 U.S.C. § 8206(13).

- **“Surplus lines broker”**: The term “surplus lines broker” means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers. 15 U.S.C. § 8206(15).

- **“State”**: The term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa. 15 U.S.C. § 8206(16).

Any questions concerning

- (1) surplus lines insurers registration should be directed to Deb Almeida at (401) 462-9542 or Debra.Almeida@dbr.ri.gov
- (2) surplus lines broker licensing should be directed to Sandra West at (401) 462 9621 or Sandra.west@dbr.ri.gov
- (3) surplus lines **taxes** should be directed to the RI Division of Taxation at (401) 574-8935 or Tax.Corporate@tax.ri.gov

All other inquiries should be directed to dbr.insurance@dbr.ri.gov

Joseph Torti III
Superintendent of Insurance

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