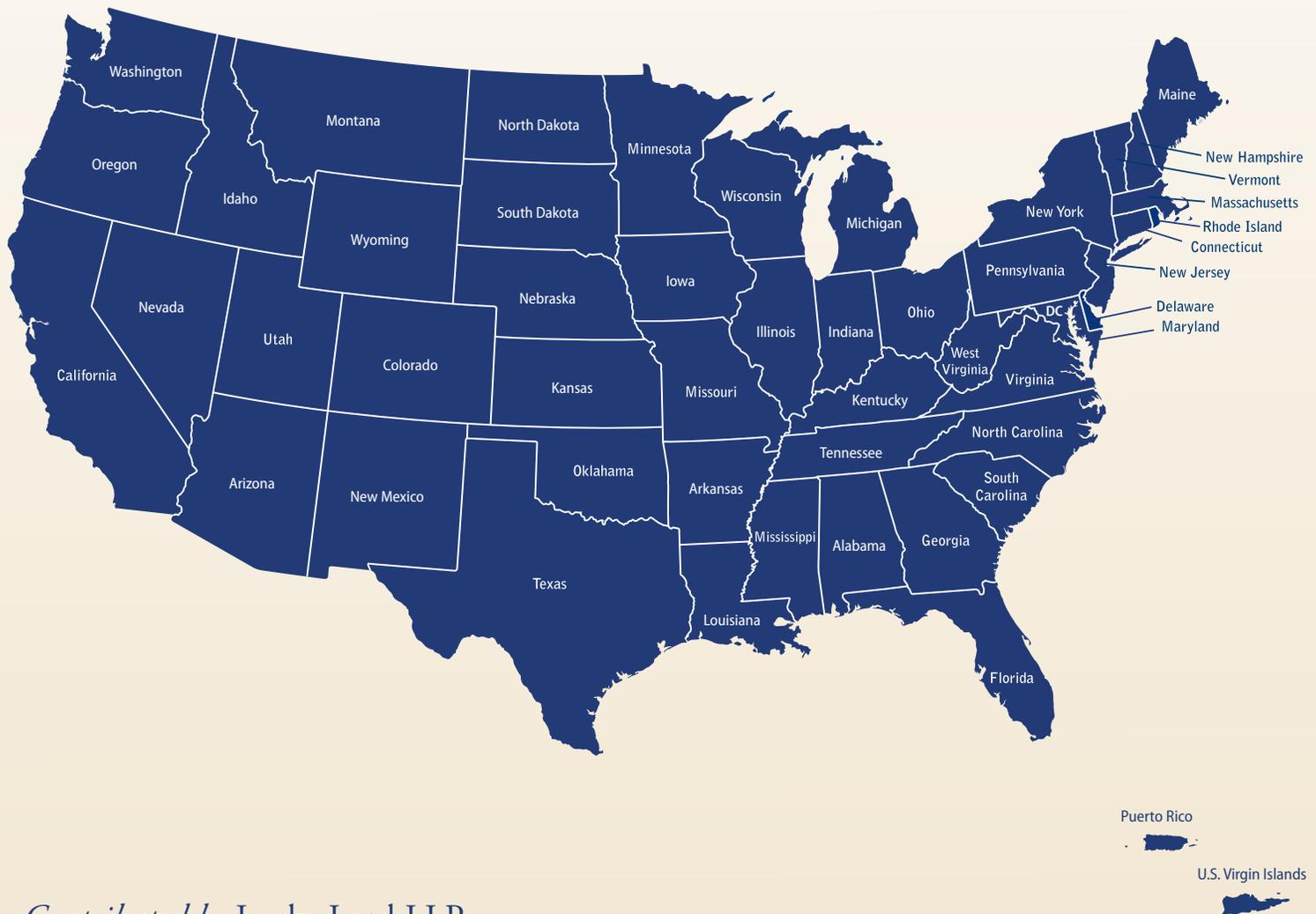


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The Insurance Coverage Law Information Center

Presents...

2015 Excess and Surplus Lines Law: *A State-by-State Compendium*



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Introduction

A Word from the Editor...

Welcome to the **2015 Excess and Surplus Lines Law: A State-by-State Compendium!**

This state-by-state compendium, culled from **FC&S Legal's Eye on the Experts** column, is taken from the 2015 Excess and Surplus Lines Laws in the United States Manual, contributed by John P. Dearie, Jr., John N. Emmanuel, Robert A. Romano, and Paige D. Waters, attorneys at Locke Lord LLP, which reflects all of the pertinent changes in the surplus lines laws and regulations of the 50 states and U.S. territories including a special section on the Non-Admitted and Reinsurance Reform Act ("NRRA") and the steps surplus lines carriers and brokers should be taking now to ensure compliance with this groundbreaking legislation.

Easy to use and highly informative, this **State-by-State Compendium** will be your go-to resource for **Excess and Surplus Lines Law** around the nation.

On behalf of our subscribers and the entire **FC&S Legal** team, we send our many thanks to Locke Lord LLP attorneys John P. Dearie, Jr., John N. Emmanuel, Robert A. Romano, and Paige D. Waters for providing **FC&S Legal** with this invaluable resource. Thanks, also, to Rachel Hengst, the Communications Specialist at Locke Lord LLP, who helped make the publication of the **Excess and Surplus Lines Laws Manual** possible, and to The National Underwriter Company staff who worked tirelessly to produce and distribute the **Excess and Surplus Lines Manual** to **FC&S Legal** subscribers.

I also wish to thank Steven A. Meyerowitz, the Director of **FC&S Legal** and Consulting Editor for the **2015 Excess and Surplus Lines Law: A State-by-State Compendium**, for generously sharing his expertise with all of us on the **FC&S Legal** team, and for ensuring that all of the publications under the **FC&S Legal** umbrella exceed the industry's highest editorial standards.

Enjoy the *Compendium!*

Victoria Prussen Spears

Editor, Excess and Surplus Lines Law: A State-by-State Compendium

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2015 Excess and Surplus Lines Law: *A State-by-State Compendium*

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2015 Excess and Surplus Lines Law: *A State-by-State Compendium*

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2015 Excess and Surplus Lines Law:

A State-by-State Compendium

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2015 Excess and Surplus Lines Law: *A State-by-State Compendium*

Executive Summary

This 2015 Excess and Surplus Lines Laws in the United States Manual reflects all of the pertinent changes in the surplus lines laws and regulations of the 50 states and U.S. territories during the past year including a special section on the Non-Admitted and Reinsurance Reform Act ("NRRRA") and the steps surplus lines carriers and brokers should be taking now to ensure compliance with this groundbreaking legislation.

The authors begin the series with a summary of the key provisions of the NRRRA that will affect the current regulation of surplus lines insurance in the United States and an introduction to the eligibility and filing requirements.

The Compendium then details state-by-state eligibility and filing requirements.

2015 Excess and Surplus Lines Law: *A State-by-State Compendium*

States' Implementation of NRRA in 2014

The Nonadmitted and Reinsurance Reform Act ("NRRA") came into effect on July 21, 2011 as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The purpose of the NRRA was to create a more simplified and efficient surplus lines tax payment and regulatory system by limiting regulatory authority of surplus lines transactions to the home state of the insured and by establishing federal standards for the collection of surplus lines premium taxes, insurer eligibility, and commercial purchaser exemptions.

Thus far, all states, except Michigan and Washington D.C., have enacted legislation to implement the NRRA. These state laws focus on surplus lines premium taxation, which is the most challenging compliance issue for both brokers and state regulators. In addition to the tax issue, most of the states have attempted to conform their laws to the other issues addressed by the NRRA, including the exempt commercial purchaser exemption and surplus lines insurer eligibility standards. However, even if a state has not taken appropriate action, the NRRA standards still apply. Therefore, surplus lines brokers must look to both the NRRA and the laws of the home state of the insured to determine what they need to do to comply with all applicable rules under NRRA.

What follows is a summary of the key provisions of the NRRA that will affect the current regulation of surplus lines insurance in the United States.

One-State Compliance

The NRRA grants the insured's home state with exclusive authority to regulate placement of nonadmitted insurance. The federal act states that no state, other than an insured's home state, may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate non-admitted insurance with respect to such insured. In addition, the NRRA explicitly provides for the preemption of laws, regulations, provisions, or actions of any state that applies to nonadmitted insurance sold, solicited by, or negotiated with an insured whose home state is another state. This preemption, however, does not extend to workers' compensation insurance and any law, rule or regulation that prohibits placement of workers' compensation or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

Under the federal act, only the insured's home state is permitted to collect premium taxes for nonadmitted insurance. All other states are preempted from applying their surplus lines laws to such transactions. As defined in the NRRA, "home state" means: (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.

To facilitate the payment of premium taxes among the states, the NRRA also allows an insured's home state to require surplus lines brokers as well as insureds who have independently procured insurance to file annual tax allocation reports with the insured's home state detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks, or exposures located in each state.

Uniform Standards for Surplus Lines Eligibility

The NRRA empowers the states to create uniform national requirements, forms and procedures for insurer eligibility for U.S. domiciled (foreign) surplus lines insurers. As the states have yet to adopt a nationwide eligibility standard, the default standards established under NRRA are now in effect in all states. Specifically, a U.S. domiciled surplus lines insurer needs to meet two substantive requirements under the National Association of Insurance Commissioners ("NAIC") Non-admitted Insurance Model Act, i.e., 1) maintain capital and surplus of at least \$15 million (or the minimum capital and surplus requirement under the law of the insured's home state if higher); and 2) be "authorized to write in its domiciliary jurisdiction."

With respect to alien (non-U.S.) surplus lines insurers, states may not prohibit a surplus lines broker from placing non-admitted insurance with, or procuring non-admitted insurance from, a non-U.S., non-admitted insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC's International Insurer's Department ("IID List").

While most states have now amended their surplus lines laws to incorporate the NRRA requirements, a number of state regulators are continuing to request financial and/or premium information as well as a fee in order to include that company on their state's eligibility list. While these lists are "voluntary," many surplus lines carriers have opted to participate as they believe their absence from an eligibility list places them at a commercial disadvantage in the market. It is expected that the states requiring these additional submissions will diminish in time as they begin to rely more on the financial information that is now available for reference and download from the NAIC website.

Exempt Commercial Purchasers ("ECPs")

The NRRA preempts any state laws or regulations requiring a surplus lines broker seeking to procure or place nonadmitted insurance for certain sophisticated commercial purchasers[1] to satisfy diligent search requirements if the broker: (1) has disclosed to the purchaser that such insurance may be available from the admitted market which may provide greater protection with more regulatory oversight; and (2) the purchaser has subsequently requested in writing the broker to procure from or place such insurance with a nonadmitted insurer. States which have export lists reported in the home state of the insured as only the diligent effort requirement is waived.

States' Participation in National Producer Database

The NRRA encourages states to participate in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses. Any state that did not participate in such system by July 21, 2012 is prohibited from collecting any fees relating to licensing of an individual or entity as a surplus lines broker in the applicable state.

Implementation of NRRA

Virtually all of the states' surplus lines codes have been amended to incorporate many of the terms of the NRRA. While the NRRA recognized that the states may enter tax-sharing arrangements for surplus lines premium tax, the states have yet to agree on a consistent tax-sharing arrangement or clearinghouse model. As a practical matter, tax-sharing for surplus lines would only impact a small number of transactions since it applies only to risks having multi-state exposures which comprise approximately five percent of all surplus lines transactions.

The two principal tax compact models are the Non-admitted Insurance Multi-State Agreement ("NIMA"), and the Surplus Lines Insurance Multi-State Compliance Compact ("SLIMPACT"). A number of states such as California, New York and Texas have chosen a third option which is to forego both interstate compact approaches completely and opt to tax and keep 100 percent of surplus lines premium tax for coverage provided to the home states insured.

NIMA is advocated by the NAIC and would create a central clearinghouse for reporting, collecting and distributing surplus lines taxes among participating states in accordance with a uniform risk allocation formula. NIMA requires each state to establish a single tax rate (rather than a state-by-state tax rate). Where the home state of the insured utilizes the services of a Stamping Office, the Stamping Office will also be permitted to impose stamping fees in addition to the tax. Currently, five states (Florida, Louisiana, South Dakota, Utah and Wyoming) and Puerto Rico representing 17 percent of nationwide surplus lines premiums have endorsed NIMA. The NIMA agreement does not require a minimum number of members for operation. The eight SLIMPACT members are Alabama, Indiana, Kansas, Kentucky, New Mexico, North Dakota, Rhode Island and Vermont. SLIMPACT requires 10 members to begin operations.

2015 Excess and Surplus Lines Law: *A State-by-State Compendium*

An Introduction to Eligibility and Filing Requirements by State

This Excess and Surplus Lines Laws Compendium sets forth a summary of the surplus lines eligibility and filing requirements of the various states for both foreign (U.S.) and alien surplus lines insurers. This information is based upon state surplus lines laws and regulations as well as responses to surveys that were sent to state insurance departments and surplus lines associations. Copies of applications and other pertinent forms may be obtained by contacting the state insurance departments directly.

It should be noted that most states treat reinsurance, independently procured/direct placement insurance, industrial insurance and insurance on subjects located out-of-state as outside the ambit of surplus lines regulation.

The following section is an introduction to the state eligibility and filing requirements.

Surplus Lines Laws – Generally

Every U.S. jurisdiction has a surplus lines law, although the regulation of surplus lines business is primarily focused on surplus lines brokers. Despite the increasing interest in the solvency of non-admitted insurers, which has made the approval process somewhat more detailed, there is still almost no rate and form regulation of surplus lines insurers. By contrast, licensed insurers in the U.S. are broadly regulated as to solvency, rates and forms, market conduct, permissible investments, leverage (whether as to capital structure, premium to surplus ratio, or limit of risk to surplus) and affiliate relationships. Licensed insurers are also required to participate in a variety of government mandated insurance programs and pay assessments levied by state guaranty funds in the event of insurer insolvencies.

In theory, surplus lines insurers may *not* compete directly with licensed insurers for business and should write only business that licensed insurers will not write. Such “surplus” business must be “exported” by specially licensed surplus lines brokers who ensure that the required diligent search of licensed insurers has been accomplished and who also make appropriate tax and other filings. Certain jurisdictions maintain lists of coverages which are deemed to be generally unavailable from the admitted market (“export” lists), obviating even the need for the broker to first attempt to place these kinds of insurance with licensed carriers. In order for an unauthorized insurer to avail itself of the opportunity to write business under the surplus lines laws of the various jurisdictions, it must first become an eligible surplus lines insurer in those jurisdictions.

NAIC Approval

A non-U.S. (alien) insurer wishing to accept surplus lines insurance typically starts the process with an application for inclusion on the Quarterly Listing of Alien Insurers published by the International Insurers Department (“IID List”) of the National Association of Insurance Commissioners (“NAIC”). This includes the establishment of a trust fund, for the benefit of its U.S. policyholders, which is revalued annually and currently calculated to be the lesser of:

- (a) \$150,000,000; or
- (b) for business written on or after January 1, 1998, 30 percent of any amount up to the first \$200,000,000

plus 25 percent of any amount up to the next \$300,000,000 plus 20 percent of any amount up to the next \$500,000,000 plus 15 percent of any amount in excess of \$1,000,000,000 of either the Company’s United States gross surplus lines liabilities or the Company’s direct non-admitted United States liabilities excluding liabilities arising from aviation, wet marine and transportation insurance and direct placements. The Trust Fund Minimum Amount may in no event be less than \$5,400,000.

The application also requires that the company provide copies of its articles of incorporation and by-laws, biographical affidavits of the insurer's officers and directors, a business plan describing the insurer's global business followed by a description of the proposed lines of U.S. business, and financial statements. This information must be updated annually. A more detailed description of the application procedure and the standards for inclusion on the NAIC Quarterly List are contained in the IID Plan of Operation (see Appendix E[2]).

Eligibility Requirements of Individual States

The laws of most U.S. jurisdictions require that a surplus lines insurer be deemed "eligible" by meeting certain financial criteria or by having been designated as "eligible" on a state-maintained list. Prior to NRRRA, state eligibility standards varied widely from state to state.

Following the enactment of NRRRA on July 21, 2011, a surplus lines transaction is subject only to the eligibility requirements of the insured's home state. To the extent the home state has established its own statutory or regulatory insurer eligibility requirements, they must be consistent with the NRRRA.

Under NRRRA, the states are prohibited from imposing eligibility requirements on foreign (U.S.) surplus lines insurers except for (i) standards that conform with the NAIC's Non-Admitted Insurance Model Act ("the Model Act") or (ii) "nationwide uniform requirements, forms and procedures" enacted pursuant to a compact or other agreement among the states.

The Model Act requires a foreign surplus lines insurer to:

- (i) be authorized in its domiciliary state to write the type of insurance that it writes as surplus lines coverage; and
- (ii) have capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, equaling the greater of (1) the minimum capital and surplus requirements under the law of the home state of the insured, or (2) \$15 million.

Under the Model Act, the insured's home state commissioner may reduce or waive the capital and surplus requirements down to a minimum of \$4.5 million) after the commissioner makes a finding of eligibility based on several factors.

In addition to eligibility requirements for U.S. domiciled insurers, the NRRRA requires the states to permit the placement of surplus lines coverage with nonadmitted insurers domiciled outside the United States (alien insurers) that are listed on the NAIC's Quarterly Listing of Alien Insurers. Thus, all states must permit NAIC-listed alien insurers to place surplus lines coverage. A state may allow placement of coverage with alien insurers not on the NAIC list (and have a separate set of requirements for those non-listed insurers), but the states cannot refuse to allow placement with NAIC-listed alien insurers.

The NAIC's Quarterly Listing of Alien Insurers is available for reference and download on the NAIC's website.[3]

Many U.S. jurisdictions are now tending to recognize that the IID List is effectively the approved list of eligible nonadmitted insurers based outside the U.S. Nevertheless, a number of state regulators are continuing to request financial and/or premium information and in some cases a fee, in order to include that company on their states' eligibility list. While the level of filing information varies by state, we expect these data requests will diminish in time as state insurance departments begin to rely more on the information now available for reference and download from the NAIC's website for surplus lines eligibility purposes.

Independently Procured/Direct Placement Insurance

Surplus lines is actually one of two methods of accessing the non-admitted market. The second method is known as a direct placement or independently procured placement. This takes place when an insured elects to go out of the state and purchase the desired insurance from an unauthorized carrier either directly with the company or through a broker or agent not licensed by the jurisdiction in which the risk is located, such as a Lloyd's Broker.

The right of a U.S. citizen to leave the state to obtain insurance on a risk located in the state with an unlicensed company without being regulated by the state was first enunciated by the United State Supreme Court in its landmark decision *State Board of Insurance v. Todd Shipyards Corporation*. In that case, the High Court also upheld the right of the buyer to be free of taxation on the transaction if the only contact with the state was the fact that the insured risk was located in the state.

In *Todd Shipyards*, the insurance buyer was located out of state and purchased property coverage out of state from an unauthorized insurer. The only connection or nexus with the state in the *Todd Shipyards* transaction was the location of the insured property. Under this set of facts, the High Court concluded that under the McCarran-Ferguson Act, the state was precluded from taxing or regulating the transaction.

While a number of subsequent decisions have distinguished *Todd Shipyards*, the current case law would still protect a direct placement transaction from state regulation provided the following circumstances apply:

- The insured does not access the non-admitted insurer through a resident agent or surplus lines broker.
- There is no activity by the non-admitted insurer in the state either in the making or in the performance of the contract.
- The transaction takes place “solely” (or, in New York, “principally”) outside of the state where the insured is located.

Currently, only 43 U.S. jurisdictions have enacted self-procurement/direct placement statutes (see Appendix B[4]). However, since these statutes govern actions by buyers that are “constitutionally guaranteed,” they are intended more to tax rather than to regulate the transaction. These statutes do not prescribe rules or procedures which would grant jurisdiction over a non-admitted carrier in a self-procurement transaction, but simply impose a tax on the insured for the privilege of procuring insurance on its own behalf. Thus, subject to the judicial limitations mentioned above, state statutory authority is not required for a citizen to leave the state and purchase insurance from a non-authorized carrier.

Industrial Insurance

There are 22 U.S. jurisdictions which currently exempt nonadmitted insurers from surplus lines regulation insurance procured by industrial insureds, and an additional 12 states where an “industrial insured” exemption is recognized with respect to captive insurers or workers’ compensation insurance only (see Appendix C[5]). State statutes define industrial insureds in various ways, but, in most states, the exemption applies to “sophisticated commercial buyers” having at least \$25,000 in annual premium for non-mandatory coverages, full-time risk managers or outside insurance consultants advising them of procuring insurance, and a certain number of full-time employees (usually 25) or amount of gross sales.

Any company that qualifies under the industrial insured exemption can procure insurance from an unauthorized insurer without leaving the state or following surplus lines procedural requirements. Thus, declinations from the admitted market are not necessary. There is no escape from premium taxes, however, since most states still seek to tax that portion of the premium allocable to in-state risks. The burden of filing and paying the tax will typically fall on the insured, since a surplus lines licensee is not required in the transaction.

The industrial insured exemption has not been adopted (except for captive insurers only) in some of the largest surplus lines states such as New York, Florida and Texas. Moreover, the NAIC Non-Admitted Insurance Model Act makes no provision for industrial insurance other than to include a drafting note to the effect that individual states can consider exemptions for industrial insurance purchased by a sophisticated buyer.

Commercial Purchaser Exemption

The NRRRA also establishes a single “exempt commercial purchaser” definition and exemption standard that is applicable in every state. However, this is not a full exemption but only waives the diligent search requirement. This means a broker may go directly to the surplus lines market to place a policy for an exempt commercial purchaser if

(i) the broker has disclosed to the exempt commercial purchaser that coverage may be available from the admitted market, which may provide greater protection with more regulatory oversight; and (ii) the exempt commercial purchaser has requested in writing that the broker procure/place such coverage with a surplus lines insurer.

Most states which had industrial insured exemptions prior to the enactment of NRRRA are continuing to recognize these exemptions (see Appendix C[6]). Thus, in those states where the industrial insured exemption is retained, there could be two classes of exemptions: 1) For entities meeting the NRRRA exempt commercial purchaser requirements; and 2) An additional class for entities that meet the state's industrial insured exemption. Prior to utilizing these exemptions, brokers would be well advised to consult the law of the home state of the insured as well as the NRRRA definition to ensure that the exemption is used correctly.

Ocean Marine and Transportation Insurance

The surplus lines laws of 41 of the 53 U.S. jurisdictions (including District of Columbia, Puerto Rico and U.S. Virgin Islands) provide some type of ocean marine and transportation exemption. Most of these states provide a complete exemption for "ocean marine" although these exemptions do not always extend to aviation or transport risks generally. Those jurisdictions which do not have a full statutory exemption (or require such business to be written by an eligible surplus lines insurer) include Connecticut, District of Columbia, Florida, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin. In these states, insurers must follow the individual criteria for writing surplus lines business as set forth in the state's surplus lines laws.

Broker Licensing

The NRRRA prohibits any state except the home state of the insured from requiring that a surplus lines broker be licensed in order to sell, solicit, or negotiate surplus lines insurance with respect to the insured. Accordingly, a broker is only required to maintain one surplus lines producer license to place a surplus lines policy, i.e., a license (resident or non-resident) in the insured's home state. For a wholesale transaction, the wholesale broker on each such account must have the appropriate license in the "home state of the insured" for each state where placements are made.

On January 12, 2015, legislation was enacted that established a permanent National Association of Registered Agents and Brokers ("NARAB II"). NARAB will create a national clearinghouse as a one-stop licensing system for agents and brokers operating outside of their home state. Agents and brokers will apply for membership in the Association, agreeing to strict standards and ethical requirements. NARAB will be governed by a board of state insurance commissioners and industry representatives with a goal of applying licensing, continuing education and nonresident insurance producer standards on a multi-state basis while preserving the laws of individual states.

Notes

[1] Under the NRRRA, an exempt commercial purchaser is 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 (as defined in the NRRRA) 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 twelve months; and (C) The person meets at least one of the five 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 five hundred 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 or (V) the person is a municipality with a population in excess of fifty thousand persons. Currently, there are 21 U.S. jurisdictions which exempt non-admitted insurers from surplus lines regulation insurance procured by "industrial insureds" and an additional 12 states where an "industrial insured" exemption is recognized with respect to captive insurers or workers' compensation insurance only. A complete list of these states and the relevant exemptions can be found in Appendix C, which will be featured in an upcoming installment of the *2015 Excess and Surplus Lines Laws in the United States Manual*.

- [2] Appendix E will be featured in an upcoming installment of the *2015 Excess and Surplus Lines Laws in the United States Manual*.
- [3] www.naic.org/committees_e_surplus_lines_fawg.html.
- [4] Appendix B will be featured in an upcoming installment of the *2015 Excess and Surplus Lines Laws in the United States Manual*.
- [5] Appendix C will be featured in an upcoming installment of the *2015 Excess and Surplus Lines Laws in the United States Manual*.
- [6] *Id.*



2015 Excess and Surplus Lines Laws: Alabama

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

ALABAMA

General Information:

1. Alabama **does not maintain** a list of eligible surplus lines insurers but does publish a list of certain unauthorized insurers that are known to be ineligible either as to financial requirements or as to claims practices.
2. Alabama **does** have a Surplus Lines Association.
3. Alabama **does not** have an Export List.
4. Alabama **does** have an industrial insured exemption that will remain in effect (see Appendix C). As of 7/21/2011, the exempt commercial purchaser exemption also became effective but is not yet codified.
5. **Surplus lines tax:** 6%, payable by broker.
6. Alabama has adopted **SLIMPACT** (HB 76, Act 2011-537) Effective: September 1, 2011.

Eligibility and Filing Requirements (Alien Insurers Only):

Alabama may not prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the U.S. that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

Eligibility and Filing Requirements (Foreign Insurers Only):

Alabama may not impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a U.S. jurisdiction, except:

1. Alabama may require that the insurer be authorized to write the type of insurance in its domiciliary jurisdiction; and
2. Alabama may require that the insurer have capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of the minimum capital and surplus requirements under the law of Alabama or \$15,000,000.

The insurance commissioner may waive the minimum capital and surplus requirements if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability of the insurer's capital and surplus is under \$4.5 million.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Wet marine and transportation insurance.
2. Insurance on subjects located, resident or to be performed wholly outside Alabama or on vehicles or aircraft owned and principally garaged outside Alabama.
3. Insurance on property or operation of railroads engaged in interstate commerce.
4. Insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight, or cargo of such aircraft or against liability, other than workmen's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

5. The property and operations of the shipbuilding and ship repair industry engaged in interstate or foreign commerce and vessels, cargoes, watercraft, piers, wharves, graving docks, drydocks, marine railways and building ways, commonly known as wet marine.

6. Industrial insurance.

Other Comments or Requirements:

1. The Alabama Department of Insurance ("ALDOI") has instituted a system to electronically capture data reported by surplus lines brokers and surplus lines insurers, the purpose of which is to ensure that all policies written in Alabama on a surplus lines basis are reported to the ALDOI and all taxes due to the state of Alabama are paid.

The program compares data collected from surplus lines companies doing business in Alabama against the data collected from Alabama brokers, thus surplus lines companies need to ensure that they have the correct name and license number of Alabama brokers placing business on their behalf.

Any surplus lines company failing to cooperate with the ALDOI in this program will be deemed to be conducting "its affairs in a manner as to result in the avoidance of payment of tax," in violation of Section 27.10.26, Code of Alabama 1975, and will be subject to the penalties thereof, which in effect would mean being "blacklisted" as an acceptable surplus line insurer in Alabama.

For information as to what information must be included in the electronic report, please refer to the 'Instructions for Formatting the Excel Spreadsheet' and the 'Surplus Lines Unauthorized Insurance Policy Data' example located on the ALDOI homepage at www.aldoi.gov under 'Online Services' then 'Surplus Line Information.'

Form PR can be found on the ALDOI homepage under 'Companies/Filing Requirements/Annual Audit Exam Transmittal Form PR.'

2. Onus is on broker to ascertain if insurer:

- Is financially secure;
- Has transacted business for 5 years in its domiciliary country or state unless it is a wholly owned subsidiary of an insurer authorized in Alabama;

- Is not controlled by a foreign government;
- Has not been declared ineligible; and
- Has appropriate trust fund (if alien).

3. Alabama enacted legislation in 2010 which allows a surplus lines broker to place part of an insurance risk with a non-admitted insurer which otherwise satisfies the requirements for a surplus lines insurer in the state, except for the five year seasoning requirement in its domiciliary jurisdiction, by making a special deposit in the state of not less than \$1,000,000 for the benefit of Alabama policyholders.

4. The Alabama DOI issued a Bulletin in 2013 clarifying that the written disclosure statement required to be sent to insureds to the effect that the insurance coverage provided is not written by an authorized (licensed) insurer and not subject to guaranty fund protection, no longer applies to commercial insurance. The 1992 Bulletin which imposes the disclosure requirement will continue to apply to personal lines property, primary personal lines auto, homeowners (owner occupied), renters/tenants, farm owners, condo (unit owner), dwelling fire, and mobile home manufactured homes. The requirements of this Bulletin apply to new or renewed surplus lines policies which became effective on or after May 1, 2013.

5. Every insurance contract procured and delivered as a surplus lines coverage must be initialed by, or bear the name and license number of, the surplus lines broker who procured it and must have stamped upon it the following:

"This contract is registered and delivered as a surplus line coverage under the Alabama Surplus Line Insurance Law."

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Alabama	§27-10-31	6% (annually)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Alabama	§27-10-35(c)	4% (within 30 days)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Alabama	<p>1) Insurance procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant;</p> <p>2) Minimum \$25,000 aggregate annual premiums on all risks other than workers' compensation and group insurance; and</p> <p>3) Minimum 25 employees.</p>	§27-10-20(2)	Not codified.



2015 Excess and Surplus Lines Laws: Alaska

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

ALASKA

General Information:

1. Alaska **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Alaska **does not** have a Surplus Lines Association or Stamping Office.
3. Alaska **does** have an Export List.
4. Alaska **does not** have an industrial insurance exemption but has a statutory exempt commercial purchaser exemption and also recognizes the federal ECP definition under NRRRA (see Appendix C).
5. **Surplus lines tax:** 2.7% for lines other than wet marine and transportation (+ 1% filing fee), .75% (wet marine, transportation), payable by broker.

Eligibility and Filing Requirements (For Alien Insurers NOT on the IID List):

1. **Annual Report:** certified and in U.S. Dollars. Due annually 9 months after reporting period for non-IDD listed alien insurers).
2. **Application** (Form 08-1241).
3. **Biographical Data.**
4. **Certificate of Authority** from Domiciliary Regulator (country).
5. **Fees:** \$500 (renewal), and \$100 (for filing certified annual statement) (only required for alien insurers not on the NAIC Quarterly List).
6. **Capital and Surplus:** \$15,000,000.
7. **Power of Attorney:** Appointment of Director to receive service of process (Form 08-253).
8. **Plan of Operation.**
9. **Designation of Person** to accept service of process (Form 08-254).
10. **Articles of Incorporation and By-laws** (certified copies).
11. **Underwriting Policy.**
12. **List of Control of Insurer.**
13. **Trust Fund:** \$2,500,000
14. **Valuation of Assets from Trustee.**

There are no eligibility and filing requirements for insurers listed on the IID list.

Eligibility and Filing Requirements (Foreign Insurers Only):

1. **Annual Statement:** electronic version filed with the NAIC is acceptable: due July 1.
2. **Certificate of Authority or Compliance** (from Domiciliary Regulator showing lines authorized to write): due July 1.
3. **Capital & Surplus:** \$15,000,000.

Types of Insurance Exempted from Surplus Lines Regulation:

Wet marine and transportation insurance (including cargo) per definition in AS 21.34.900(15).

Other Comments or Requirements:

1. Alaska eligibility list: most current located at: <http://commerce.state.ak.us/dnn/Portals/7/pub/Bulletins/B14-01.pdf>.

2. Workers' compensation insurance may be placed in and written by non-admitted insurer **only if all requirements in AS 21.34.030 are met.**
 - January, February, March (June 1)
 - April, May, June (September 1)
 - July, August, September (December 1)
 - October, November, December (March of the following year)
3. Alaska provides that in case of a healthcare insurance market crisis, the Director will have the discretion to permit using nonadmitted carriers for healthcare insurance under AS 21.34. This provision does **not** open the way to write health insurance by exception under AS 21.34, and specifically **may not be used** to secure a lower premium rate for obtaining a competitive advantage.
4. Alaska requires that a (non-IID listed) alien non-admitted insurer which fails to pay the fee or file the financial statement required by Alaska statutes will be removed from the Alaska list of Eligible Surplus Lines Insurers.
5. AS 21.34.100(a) the surplus lines broker shall promptly deliver to the named insured or the producing broker the policy or, if the policy is not then available, a cover note, binder, or other evidence of insurance. The cover note, binder, or other evidence of insurance for the named insured shall be executed by the surplus lines broker and must contain a summary of all material facts that would regularly be included in the policy, the description and location of the subject of insurance, a general description of the coverages of the insurance, the premium and rate charged and taxes to be collected from the insured, the name and address of the insured, the name of each surplus lines insurer and the percentage of the entire risk assumed by each, the name of the surplus lines broker, and the license number of the surplus lines broker. Promptly delivery means no later than 30 days after the effective date of the coverage or the date coverage is bound, whichever occurs first. Evidence of insurance includes subsequent endorsements and company audits related to a policy.
6. The Alaska DOI reporting requirements for all surplus lines transactions are all new and renewal policies effective January 1, 2013 and later and all endorsements and audits invoiced January 1, 2013 or later, regardless of the effective date of the policy, must be reported on a quarterly basis with the Quarterly Report sent to the Division of Insurance with the taxes and fees paid by ACH on or before the following due dates:
 - January, February, March (June 1)
 - April, May, June (September 1)
 - July, August, September (December 1)
 - October, November, December (March of the following year)
7. Every evidence of insurance negotiated, placed, or procured by a surplus lines broker must bear the name of the surplus lines broker, which may not be covered, concealed, or obscured by the producing broker, and the following legend in at least 10 point type:

"This is evidence of insurance procured and developed under the Alaska Surplus Lines Law, AS 21.34. It is not covered by the Alaska Insurance Guaranty Association Act, AS 21.80."
8. Diligent search efforts of the admitted market must be documented prior to binding with a surplus lines insurer. The documentation must be provided to the surplus lines broker no later than 15 days after binding.
9. A surplus lines insurer must include with each policy an Alaska Policyholder Notice. The surplus lines broker is responsible for ensuring the notice is attached to the policy. The approved form of the Alaska surplus lines policyholder notice required under 3 AAC 25.050 is set out below. A surplus lines insurer may submit another format for review and possible approval by the director.

ALASKA POLICY HOLDER NOTICE 3 AAC 25.050

This policy is issued by a nonadmitted or surplus lines insurer. Insurance may only be purchased from nonadmitted insurers if the full amount, kind, or class of insurance cannot be obtained from insurers who are admitted to do business in the State of Alaska. Your broker or the surplus lines broker has determined that this was true on the date the policy was placed.

Before issuing a renewal policy or extending this policy, remarketing is required. To avoid intentional or unintentional extension of coverage in the surplus lines market when an admitted market for that coverage exists, a nonadmitted insurer is prohibited

from the automatic renewal or extension of a policy without remarketing by your broker or the surplus lines broker.

In order to comply with the Alaska Administrative Code, the following notice is given:

You are hereby notified that, under 3 AAC 25.050, your policy will terminate effective no later than the date and time of its expiration. We reserve the right to cancel this policy sooner than the expiration date by giving you notice of cancellation as required in AS 21.36.220. You may request through your broker that a new policy from the surplus lines broker be concurrent with the effective date of the termination of this policy. You are also notified that a new policy, if issued by us, is subject to rerating, which may result in a premium increase of more than ten percent (10%). As required by 3 AAC 25.050, you are hereby notified that any subsequent policy issued by us may be subject to a ten percent (10%) or more increase in premium. The actual premium will be based upon rates that apply at the time a subsequent policy, if any, is issued and will be made available to you before the effective date of the new policy, or the date subsequent coverage is bound, whichever occurs first.

10. The Alaska independent procurement statute 21.33.061 requires tax payment to Alaska when Alaska is the home state of the insured. The tax rate is 3.7%.

11. In 2014, the Alaska Division of Insurance (“ADOI”) issued Bulletin 14-05 to notify surplus lines licensees and companies of adopted regulatory changes intended primarily to bring Alaska in to compliance with the Nonadmitted and Reinsurance Reform Act (“NRRRA”). These changes include, but are not limited to:

- A move from annual to quarterly tax payment requirements (June 1, September 1, December 1 and March 1);
- A move from monthly reporting to quarterly reporting requirements;
- Elimination of requirement for the surplus lines broker to sign each report of a surplus lines transaction; however, the surplus lines broker is required to sign quarterly reports; Modifications to diligent search

requirements, including that the producing broker must provide the surplus lines broker diligent search documentation within 15 days of binding the insurance contract;

- Removal of requirement that the policyholder’s notice be in the binder and cover note but the surplus lines broker continues to be responsible to ensure the notice is part of the policy; and Clarification that alien insurers not on the Quarterly Listing of Alien Insurers must pay a fee to be on Alaska’s eligibility list.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Alaska	§21.09.210	2.7% (+1% filing fee)
	§21.34.180	0.75% (wet marine)
	§21.34.190	(quarterly)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Alaska	§21.33.061(c)	3.7% (annually) 0.75% (wet marine, transportation)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Alaska ⁽¹⁾	No	AS §21.34.020(C) 3 AAC 29.545	<p>An exempt commercial policy holder is an entity that has sufficient insurance buying expertise to negotiate with insurers in a largely unregulated environment and that meets any two of the following criteria:</p> <p>(1) has net worth of over \$30 million;</p> <p>(2) has net revenues or sales of over \$75 million;</p> <p>(3) has more than 300 employees per individual company or 800 per holding company aggregate;</p> <p>(4) procures its insurance through use of a risk manager, employed or retained;</p> <p>(5) collects annual aggregate premiums of over \$250,000;</p> <p>(6) is a nonprofit or public entity with an annual budget or assets of at least \$30 million;</p> <p>(7) is a municipality with a population of over 25,000.</p> <p>Also under §21.34.900(13); Bulletin B 11-03 (July 22, 2011) AK recognizes the ECP definition under NRRRA.</p>

- (1) The Alaska legislature added language to its surplus lines laws in 2009 to extend the commercial policyholder exemption for surplus lines.

From Appendix D: Surplus Lines Legislative Update 2014

ALASKA

The Alaska Division of Insurance (“ADOI”) issued **Bulletin 14-05** to notify surplus lines licensees and companies of adopted regulatory changes intended primarily to bring Alaska in to compliance with the Nonadmitted and Reinsurance Reform Act (“NRRRA”). These changes include, but are not limited to:

- A move from annual to quarterly tax payment requirements (June 1, September 1, December 1 and March 1);
- A move from monthly reporting to quarterly reporting requirements;
- Elimination of requirement for the surplus lines broker to sign each report of a surplus lines transaction; however, the surplus lines broker is required to sign quarterly reports;
- Modifications to diligent search requirements, including that the producing broker must provide the surplus lines broker diligent search documentation within 15 days of binding the insurance contract;
- Removal of requirement that the policyholder’s notice be in the binder and cover note but surplus lines broker continues to be responsible to ensure the notice is part of the policy; and
- Clarification that alien insurers not on the Quarterly Listing of Alien Insurers must pay a fee to be on Alaska’s eligibility list.

Alaska continues to require insurers to appear on the ADOI’s eligibility list. To appear on the eligibility list, in addition to meeting the minimum capital and surplus of \$15,000,000, an insurer must file a certified copy of a financial statement that has been approved by the insurer’s domiciliary state and pay an annual fee.

The regulatory changes took effect on September 4, 2014.



2015 Excess and Surplus Lines Laws: Arizona

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

ARIZONA

General Information:

1. Arizona **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Arizona **does** have a Surplus Lines Association (see Other Comments section #5).
3. Arizona **does** maintain an Export List (see Other Comments section #6).
4. Arizona **does** have an industrial insured exemption which generally follows the NRRRA approach (see Appendix C).
5. **Surplus lines tax:** Single-state risks: 3%, payable by broker plus stamping fee of 0.20% (semi-annually). Multi-state risks (quarterly).
6. Arizona has not affiliated with any existing compact but has been authorized to participate in a tax sharing agreement (HB 2112 Laws 2011, Ch. 136) Effective: July 20, 2011. Unless Arizona enters into a compact or multistate agreement, Arizona shall retain 100% of the surplus lines premium tax for coverage provided to Arizona home-state insureds.

Eligibility and Filing Requirements (Alien Insurers Only):

Arizona may not prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from an alien insurer on the IID List. The AZ DOI added a link to its website which ties the AZ eligibility list directly to the NAIC Quarterly List (see Other Comments section #1).

ARS § 20-413 provides that for an alien insurer to be placed on the AZ List of Qualified Unauthorized Insurers, a sponsoring surplus lines broker must submit

to the Director a completed Certificate of Surplus Lines Broker (Section 1) and, Broker Affidavit (Section II) (SL Form 110 ed: 07/21/2011).

Eligibility and Filing Requirements (Foreign Insurers Only):

1. **Application** must be filed by broker on or before June 1 of each year.
2. **Broker's Sponsorship** (through a licensed resident surplus lines broker).
3. **Sworn Statement** that the broker has ascertained the financial condition of the insurer by completion of the ADOI SL Form 110 - Ed 7/21/2011.
4. **Certificate of Public Supervisory Official** (ADOI SL Form 111 - Ed 7/21/2011, certifying capital and surplus).
5. **Report of Examination:** certified.
6. **Annual Statement:** certified.
7. **Certificate of Compliance.**
8. **Capital and Surplus:** \$15 million.

Eligibility (Insurance Exchange only):

Trust Deposit: \$2,500,000.

Classes of Insurance Exempted from Surplus Lines Regulation:

1. Ocean marine and foreign trade insurance.
2. Insurance on subjects located, resident or to be performed wholly outside Arizona, or on vehicles or aircraft owned and principally garaged outside Arizona.

3. Insurance on property or operations of railroads engaged in interstate commerce.

Other Comments or Requirements:

1. Arizona eligibility list available at [www.azinsurance.gov/insurers.html#section SLIM](http://www.azinsurance.gov/insurers.html#section%20SLIM).
2. Broker may rely on the information contained in the most recent NAIC Quarterly List of Alien Insurers as prima facie evidence of an alien insurer's compliance.
3. Brokers placing insurance on ocean marine & foreign trade, out-of-state risks, vehicles or aircraft owned and principally garaged outside Arizona, and railroads engaged in interstate commerce, must keep a record for not less than three years from the expiration or cancellation date of the insurance in the same detail as required for surplus lines insurance. The record must be kept available in Arizona for examination by the Director of Insurance.
4. Surplus line tax exempt risks include:
 - Mexican auto insurance.
 - State of Arizona property and liability insurance.
 - Surplus line insurance purchased by federally recognized Indian tribes to cover risks on its own reservation.
5. Contact information for the Surplus Lines Association of Arizona is as follows:

J. Scott Wede
 Surplus Lines Association of Arizona
 Kierland Business Center
 15849 N. 71st Street, Suite 100
 Scottsdale, Arizona 85254
 Phone: (602) 279-6344
 Email: swede@sla-az.org
6. Arizona export list is available on the Arizona Surplus Lines Association filing systems (www.sla-az.org) and on the ADOI website ([www.azinsurance.gov/insurers.html#section SLIM](http://www.azinsurance.gov/insurers.html#section%20SLIM)).
7. Any policy and any evidence of surplus lines coverage from an unauthorized insurer that is issued for delivery to the insured must contain a conspicuously stamped or written notice in bold faced type that states:

Pursuant to Arizona Revised Statutes §20-401.01, subsection B, paragraph 1, this policy is issued by an insurer that does not possess a certificate of authority from the Director of the Arizona Department of Insurance. If the insurer that issued this policy becomes insolvent, insureds or claimants will not be eligible for insurance guaranty fund protection pursuant to Arizona Revised Statutes Title 20.

8. The Arizona Legislature has removed the compliance attestation from the required information a surplus lines broker must file with the Arizona Insurance Department to procure surplus lines insurance, if the insurance coverage is not a recognized surplus line. A surplus lines broker is also required to maintain evidence of compliance with ARS §20-407(A) for the duration of the policy plus 6 years after expiration date, if the coverage is not a recognized surplus line. A facsimile of a broker's signature is allowed on the quarterly statement to be submitted to the stamping office in lieu of the original. The broker must maintain the original notarized statement for 6 years after the calendar year in which the statement was filed.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Arizona	§20-415, §20-416(a)	3% (semi-annually) (+ 0.20% stamping fee). Multi-state risks (quarterly).

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Arizona	§20-401.07(a)	3% (annually)(Industrial Insurance only)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Arizona	<p>1) Insurance procured through qualified risk manager;</p> <p>2) Minimum \$100,000 aggregate annual gross premiums for insurance on all property and casualty risks; and</p> <p>3) Meets at least one of the following criteria:</p> <p>a) Minimum \$20 million net worth;</p> <p>b) Minimum \$50 million net revenues or sales;</p> <p>c) Minimum 500 full-time employees per individual company or 1,000 full-time employees per holding company;</p> <p>d) municipality with a minimum population of 50,000</p> <p>e) nonprofit or public entity with a minimum \$30 million in expenditures</p> <p>Qualified risk manager has the same definition as the NRRA.</p>	§20-401.07(C)	<p>Arizona uses the term “industrial insured,” rather than “exempt commercial purchaser.” Bulletin 2011-06 (June 28, 2011)</p> <p>Arizona’s exemption for industrial insureds is the same exemption as under the NRRA, Bulletin 2011-06 (June 28, 2011).</p> <p>3% (annually). §20-401.07(A).</p>



2015 Excess and Surplus Lines Laws: Arkansas

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

ARKANSAS

General Information:

1. Arkansas **does maintain** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Arkansas **does** have a Surplus Lines Association.
3. Arkansas **does not** have an Export List.
4. Arkansas has an industrial insured exemption for captive insurers only (see Appendix C) but otherwise follows the NRRRA definition of exempt commercial policyholder (see Appendix C).
5. **Surplus lines tax:** 4% payable by broker.
6. Arkansas has not affiliated with any existing compact but may enter into an agreement (HB 2143).

Eligibility and Filing Requirements (Alien Insurers Only):

None, if company is on IID List (§23-65-310(a)).

Eligibility and Filing Requirements (Foreign Insurers Only):

1. Notice of Intent Letter which includes the attached documentation:
 - Certificate of Compliance from the surplus lines insurer's state of domicile.
 - Copy of most recent financial statement filed with its state of domicile.
 - Uniform Consent to Service of Process Form (UCAA Form 12) – surplus lines insurers *do not* have to appoint a resident agent, but provide the full name and address where a service of process is to be forwarded on Exhibit B of the form.
2. Insurer must be authorized to write in its domiciliary jurisdiction.
3. Capital and Surplus or its equivalent under the laws of its domiciliary jurisdiction, which equals the greater of the minimum capital and surplus requirement under the law of its home state, or \$15,000,000.
4. Foreign Surplus Lines insurers no longer have to file any financial statement filings, renewal fees or state specific filings with our state since the Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA).

If you have any questions please call, or visit this webpage: www.insurance.arkansas.gov/Finance/surpluslinespage.html.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Wet marine and foreign trade insurance.
2. Insurance on subjects located, resident, or to be performed wholly outside Arkansas or on vehicles or aircraft owned and principally garaged outside Arkansas.
3. Insurance on property or operation of railroads engaged in interstate commerce.
4. Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of the aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of the aircraft.
5. Transactions subsequent to issuance of or relative to a policy covering only subjects of insurance not resident, located, or expressly to be performed in Arkansas at time of issuance, or covering property in course of transportation by land, air, or

water to, from, or through Arkansas and including any preparation or storage incidental there to, and lawfully solicited, written or delivered outside Arkansas.

Other Comments or Requirements:

1. Link to all eligible surplus lines insurers via the company search database at: www.insurance.arkansas.gov/is/companysearch/CoSearch.asp?s_NAME=&s_NAICID=&s_CoTYPE=SL+.
2. Arkansas requires each approved surplus lines carrier in the state, upon written request, to mail or deliver the policyholder's claim information to the policyholder or his or her surplus lines broker within 30 days from the date of receipt of the request from the policyholder. This legislation also makes clear that surplus lines carriers are not required to file policy forms.
3. Arkansas has a process whereby a domestic insurer possessing policyholders' surplus of at least \$20 million may be designated as a "domestic surplus lines insurer" with the written approval of the Arkansas Insurance Commissioner and be allowed to write surplus lines insurance in any jurisdiction in which it is eligible. A "domestic surplus lines insurer" is subject to the 4% surplus lines tax and would be deemed to be a non-admitted surplus lines insurer in the state of Arkansas. It is also deemed to be a non-admitted surplus lines insurer under the Dodd-Frank Act. A domestic surplus lines insurer is not subject to the Arkansas Property and Casualty Insurance Guaranty Act, or the Arkansas Life and Health Insurance Guaranty Association Act. All provisions of the Arkansas Insurance Code regarding financial and solvency requirements apply to a domestic surplus lines insurer unless it is otherwise specifically exempted.
4. Every insurance contract procured and delivered as surplus lines coverage must be initiated by or bear the name of the surplus lines broker who procured it and must contain a conspicuous statement substantially similar to the following:

This contract is registered and delivered as a surplus line coverage under the Surplus Lines Insurance Law, and it may in some respects be different from contracts issued by insurers in the admitted markets, and, accordingly, it may, depending upon the circumstances, be more or less favorable to an insured than a contract from an admitted carrier might be.

The protection of the Arkansas Property and Casualty Guaranty Act does not apply to this contract. A tax of four percent (4%) is required to be collected from the insured on all surplus lines premiums.

5. In 2014, the Arkansas DOI issued a clarifying Bulletin regarding the eligibility of Lloyd's syndicates in Arkansas. The Bulletin states that any and all Lloyd's syndicates appearing on the NAIC's Quarterly Listing of Alien Insurers are eligible insurers in Arkansas per state statute and in accordance with the NRRRA.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Arkansas	§23-65-315	4% (within 60 days after surplus lines insurance written)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Arkansas	§23-65-103(c)	2% (within 30 days after insurance procured, continued or renewed)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Arkansas	1) Insurance procured through full-time risk manager or insurance manager or utilizes the services of a regularly and continuously qualified insurance consultant;	§23-63-1601(12)	Same as NRRA.
	2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and	§23-65-304(5), §23-65-305	Subject to 2% tax (within 30 days after insurance procured, continued or renewed) (includes surplus lines insurance when procured without use of a surplus lines broker). §23-65-103(c).
	3) Minimum 25 full-time employees. Subject to taxes specific to captives under §23-63-1614.		Subject to taxes specific to captives under §23-63-1614.

From Appendix D: Surplus Lines Legislative Update 2014

ARKANSAS

The Department of Insurance issued a clarifying Bulletin regarding the eligibility of Lloyd's syndicates in Arkansas. The Bulletin states that any and all Lloyd's syndicates appearing on the NAIC's Quarterly Listing of Alien Insurers are eligible insurers in Arkansas per state statute and in accordance with the NRRA.



2015 Excess and Surplus Lines Laws: California

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

CALIFORNIA

General Information:

1. California **does maintain** a List of Approved Surplus Line Insurers (LASLI) (www.insurance.ca.gov/01-consumers/120-company/07-lasli/lasli.cfm). The LASLI is a voluntary list of nonadmitted insurers that the California Department of Insurance (CDI) has approved for use by surplus line brokers for placement of risks when California is the home state of the insured.
2. California **does** have a Surplus Line Association (www.slacal.org/index.html) (also see Other Comments section #14).
3. California **does maintain** an Export List (see Other Comments section #4) (www.slacal.org/broker_info/br_export_list.html).
4. California **does** have an industrial insured exemption (see Appendix C) and also recognizes the exempt commercial purchaser (called "commercial insured" in California) under NRRRA.
5. **Surplus lines tax/Stamping Fee:** 3% payable by broker to the CDI; stamping fee of .20% payable by broker to The Surplus Line Association of California(SLA).
6. California **has not** affiliated with any existing compact but has adopted legislation allowing it to keep 100% of surplus lines premium tax where California is the insured's home state (California Insurance Code Section 1775.5(b)).

Eligibility Requirements for Insurers Qualifying Under NRRRA:

Effective July 21, 2011, the provisions of the NRRRA have been incorporated into California Insurance Code

Section 1765.1 such that a broker may place surplus line insurance for California home state insureds with:

- Any **Foreign** (U.S.-domiciled) insurer provided that the insurer has met the following requirements at the time of placement: (1) the insurer is licensed to write the type of insurance in its domiciliary jurisdiction, and (2) it has at least \$45 million in capital and surplus.
- Any **Alien** (non-U.S.-domiciled) insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC International Insurers Department.

Surplus line brokers who make placements with nonadmitted insurers under Insurance Code Section 1765.1 are responsible for determining the eligibility of these insurers at the time of placement.

Eligibility and Filing Requirements for Nonadmitted Insurers Approved on the LASLI:

In California, nonadmitted insurers may also voluntarily seek to be placed on the LASLI maintained by the CDI. This is an optional listing and insurers need not be on the LASLI to be used for surplus line placements. Both foreign and alien nonadmitted insurers may be included on the LASLI provided the insurers satisfy the standards set forth in California Insurance Code Section 1765.2. Nonadmitted insurers on the LASLI must demonstrate to the State of California their financial stability, reputation and integrity, as well as adhering to specific capitalization, investment and solvency standards established under the Insurance Code Section 1765.2. Insurers on the LASLI will be required to file all documents mandated in that code section and pay the appropriate filing fees pursuant to California Insurance Code Section 1765.2(j).

1. **Capital and Surplus:** \$45,000,000.
2. **Seasoning:** three years of prior operating history.
3. **Surplus Line Contact Broker:** must be a California-licensed surplus line broker.
4. **Filing Fee:** \$6,113 (initial application), \$3,057 (subsequent annual renewal), \$341 (per type of updated financial documents), and \$50 (per type of updated non-financial documents).
5. **Annual Financial Statement:** certified, in U.S. Dollars, not older than 12 months.
6. **Quarterly Financial Statement:** verified.
7. **Report of Examination:** certified.
8. **Trust Agreement and Quarterly Statement of Trust Asset Account** (alien insurers only): verified.
9. **Audited Financial Report:** certified or verified, not older than 12 months.
10. **License or Certificate of Authority:** certified.
11. **Certificate of Compliance or Certificate of Good Standing** (or other equivalent certificate) from domiciliary regulator or from a licensed state.
12. **Market Conduct Report:** certified or verified.
13. **Regulatory Disclosure Statement:** verified.
14. **Proposed Products** in California.
15. **Principal Place of Business.**
16. **Appointment of Agent for Service of Process** in California.
17. **Biographical Affidavits** of insurer's officers and directors.
18. **List of Brokers** authorized to issue policies on behalf of the insurer.
19. Any additional information or documentation required by the Commissioner which is relevant to the financial stability, reputation, and integrity of the non-admitted insurer.

NOTE: If any of the documents required under California Insurance Code Section 1765.2 are available from the NAIC or other public source, the insurer does not need to file those documents with the CDI. However, if hard copies of the documents are

provided to the CDI instead, these documents must be certified or verified and submitted in quadruplicate (one original and three photocopies). Refer to SLA Bulletin #1288 (dated September 25, 2013) for details regarding California eligibility and filing requirements for surplus line insurers. (www.slacal.org/publications/bulletins/1200_series/1288.pdf)

Types of Insurance Exempted from Surplus Lines Laws and Regulations:

The Coverages listed below are exempt from California surplus lines laws and regulations. These coverages must be placed by and through a California licensed special lines' surplus line broker. California Insurance Code Section 1760.5 exempts special lines' surplus line brokers from placing exempt lines coverages with only eligible surplus line insurers.

1. Insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other shipowner interests; upon goods, wares, merchandise and all other personal property and interests therein, in the course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks; and marine builder's risks, drydocks and marine railways, including insurance of ship repairer's liability, and protection and indemnity insurance, but excluding insurance covering bridges or tunnels.
2. Reinsurance of the liability of an admitted insurer.
3. Insurance on property or operations of railroads engaged in interstate commerce.
4. Aircraft or spacecraft coverage.

Other Comments or Requirements:

1. Effective July 21, 2011, when California is the insured's home state, California is the only state (1) where the broker needs to be a licensed surplus line broker; (2) to regulate the nonadmitted placement (such as the diligent search requirement); and (3) to require the payment of premium tax for nonadmitted insurance (i.e. 100% of the gross premium).
2. The California Insurance Code Section 1764(a) allows a licensed California surplus line broker to issue policies for home state insureds, in addition to other evidence of insurance (such as certificates) on behalf of eligible nonadmitted insurer(s),

provided prior written authority has been granted by the insurer(s) and notification is given by the insurer(s) to the CDI.

3. Insurance Code Section 1763(h)(1) exempts brokers from conducting a diligent search of the admitted market if the broker is placing nonadmitted insurance for a California home state commercial insured.
4. Coverages and risks that are on the "Export List" may be placed in the surplus line market without a diligent search.
5. Insurance Code Section 1620(b) exempts eligible surplus line insurers from filing "Pre-Answer Bonds" with the courts before the insurers initiate or defend a lawsuit filed against them.
6. Insurance Code Section 1765.1(f) permits insurance to be placed, on a limited basis, with nonadmitted insurers not eligible under 1765.1 if certain conditions are met (refer to the Code Section for specifics).
7. Insurance Code Section 1773 permits surplus line brokers to advertise and solicit in any advertising or marketing medium; these advertisements may include the name of specific nonadmitted insurers as well as the nonadmitted insurance products available, as long as:
 - the nonadmitted insurer is legally authorized to accept placements from the surplus line broker pursuant to California Insurance Code Section 1765.1;
 - the nonadmitted insurer's name is not used in connection with any of its own nonadmitted insurance products;
 - the insurer's unlicensed status, and the nonadmitted status of the insurance products are disclosed in the ad in type no smaller than any telephone or fax number or address shown in the ad;
 - the ad does not contain any knowingly false or misleading information; and
 - the ad does not contain any information about premiums or rates.

NOTE: For eligible nonadmitted insurers that are members of groups of insurers, the law allows surplus line brokers and special lines' surplus line brokers to use the name of the group in their advertising.

8. Insurance Code Section 1760.5(h) permits special lines' surplus line brokers to advertise and solicit business in the same manner as surplus line brokers, except that special lines' surplus line brokers are not limited to advertise or solicit with only eligible surplus line insurers pursuant to Insurance Code Section 1765.1.
9. Insurance Code Sec. 703.1(a) permits any eligible surplus line insurer pursuant to Insurance Code Section 1765.1 to advertise in all media, provided all of the following apply:
 - his/her unlicensed status is disclosed;
 - the ad is truthful;
 - the ad does not discuss premiums or rates; and
 - specific products are not mentioned in media of general circulation. The prohibition against advertising specific products in "media of general circulation" does not extend to advertising in insurance trade press as well as other trade, industry and special interest publications.
10. For nonadmitted companies not eligible pursuant to Insurance Code section 1765.1, advertising is permitted in any media except media targeted primarily at California insureds or prospective insureds, as long as they meet the standards set forth in Insurance Code Section 703.1(a) and do not advertise any information about a specific product.
11. California Insurance Code Section 1679 permits a non-resident license to be issued to a surplus line broker and a special lines' surplus line broker if the non-resident broker holds that type of license in the state or territory of the U.S. where the resident license is maintained. Insurance Code Section 1768(d) requires non-resident surplus line brokers to keep in the state where he or she is licensed complete records of the business transacted by him or her with nonadmitted insurers under his or her California non-resident surplus line broker license.
12. California Insurance Code Section 1763(g) allows brokers to extend existing surplus lines policies by 90-days without having to file a Confidential Report of Surplus Line Placement (SL-1) and a Diligent search Report (SL-2) with the SLA. This policy extension does not allow any changes in

coverage, terms, conditions or limits, however. Any additional premium charged for the extension is determined pro rata, based on the same rate of premium as the existing surplus line policy.

13. California requires every applicant for a surplus line broker business entity license to provide names of all persons who may exercise the power and perform the duties under the license. In addition, whenever a surplus line broker licensed as an organization desires to change the persons who are authorized to transact business under the license, it shall immediately file an application with the CDI reflecting the change. The legislation requires all natural persons named to take and pass the qualifying examination, and become individually licensed as a surplus line broker. Also, surplus line brokers who are only transacting on behalf of a licensed surplus line broker organization are no longer required to file a \$50,000 surplus lines bond. However, all other surplus line brokers who are also placing surplus lines business through their individual license, must still comply with the \$50,000 bond requirement. Refer to Insurance Code sections 1656, 1661, 1679. 1765(c) for specifics.
14. Contact information for the SLA is as follows:

Benjamin McKay, J.D., M.P.A.,
Executive Director
The Surplus Line Association of California
50 California Street, 18th Floor
San Francisco, California 94111
Phone: (415) 434-4900
Fax: (415) 434-3716
Email: bmckay@slacal.org
15. California Insurance Code Section 1761(b) authorizes a non-admitted insurer that is affiliated with a California domestic insurer to have common directors and to receive certain administrative services rendered in California by its domestic affiliate as long as the non-admitted insurer provides the CDI with a description of the administrative services to be rendered by the domestic affiliate and the services do not violate specified prohibitions.
16. California Insurance Code section 1764.1 requires a specific disclosure statement to be provided to and signed by the insured at the time the producer accepts an application for an insurance policy issued by a nonadmitted insurer, other than a

renewal of that policy. This disclosure is provided on a form referred to as the D-1 Freestanding Disclosure statement (see below for the form). The D-1 must be printed in 16-point bold type. The agent, broker, or surplus line broker who received the originally signed D-1 statement from the insured must maintain the original in his or her records for a period of at least five years and send copies of the D-1 to all agents, brokers, or surplus line brokers involved in the transaction. [NOTE: The requirement to send copies of the D-1 to all other agents, brokers or surplus line brokers will be considered satisfied if the surplus line broker obtains and maintains a copy of the signed D-1.]

NOTICE:

- 1. THE INSURANCE POLICY THAT YOU [HAVE PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS LINE" INSURERS.**
- 2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT THAT APPLY TO CALIFORNIA LICENSED INSURERS.**
- 3. THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.**
- 4. THE INSURER SHOULD BE LICENSED EITHER AS A FOREIGN INSURER IN ANOTHER STATE IN THE UNITED STATES OR AS A NON-UNITED STATES (ALIEN) INSURER. YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINE" BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER 1-800-927-4357. ASK WHETHER OR NOT THE INSURER IS LICENSED AS A FOREIGN OR NON-UNITED STATES (ALIEN) INSURER AND**

FOR ADDITIONAL INFORMATION ABOUT THE INSURER. YOU MAY ALSO CONTACT THE NAIC'S INTERNET WEBSITE AT WWW.NAIC.ORG.

5. FOREIGN INSURER SHOULD BE LICENSED BY A STATE IN THE UNITED STATES AND YOU MAY CONTACT THAT STATES DEPARTMENT OF INSURANCE TO OBTAIN MORE INFORMATION ABOUT THAT INSURER.
 6. FOR NON-UNITED STATES (ALIEN) INSURERS. THE INSURER SHOULD BE LICENSED BY A COUNTRY OUTSIDE OF THE UNITED STATES AND SHOULD BE ON THE NAIC'S INTERNATIONAL INSURERS DEPARTMENT (IID) LISTING OF APPROVED NONADMITTED NON-UNITED STATES INSURERS. ASK YOUR AGENT, BROKER OR "SURPLUS LINE" BROKER TO OBTAIN MORE INFORMATION ABOUT THAT INSURER.
 7. CALIFORNIA MAINTAINS A LIST OF APPROVED SURPLUS LINE INSURERS. ASK YOUR AGENT OR BROKER IF THE INSURER IS ON THAT LIST, OR VIEW THAT LIST AT THE INTERNET WEB SITE OF THE CALIFORNIA DEPARTMENT OF INSURANCE: WWW.INSURANCE.CA.GOV.
 8. IF YOU, AS THE APPLICANT, REQUIRED THAT THE INSURANCE POLICY YOU HAVE PURCHASED BY BOUND IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE WAS GOING TO LAPSE WITHIN TWO BUSINESS DAYS OR BECAUSE YOU WERE REQUIRED TO HAVE COVERAGE WITHIN TWO BUSINESS DAYS, AND YOU DID NOT RECEIVE THIS DISCLOSURE FORM AND A REQUEST FOR YOUR SIGNATURE UNTIL AFTER COVERAGE BECAME EFFECTIVE, YOU HAVE THE RIGHT TO CANCEL THIS POLICY WITHIN FIVE DAYS OF RECEIVING THIS DISCLOSURE. IF YOU CANCEL COVERAGE THE PREMIUM WILL BE PRORATED AND ANY BROKER'S FEE CHARGED FOR THIS INSURANCE WILL BE RETURNED TO YOU.
- Date:** _____
- Insured:** _____
17. Every policy issued by a nonadmitted insurer and every certificate evidencing the placement of insurance must contain or have affixed on its front by the insurer or surplus line broker this disclosure statement, in 16-point bold type, referred to as the D-2 statement is a disclosure statement, which contains substantially the same wording as the D-1 statement above but does not require a signature by the insured.
 18. California Insurance Code Sections 1763.2 and 1764.1(a)(1) as amended by AB 245 permit surplus line brokers to rely upon disclosure statements obtained by another licensee as evidence that it was obtained from the insured.
 19. The disclosure statement is not needed if the broker has determined that the policy is being issued to an industrial insured (see Insurance Code Section 1764.1(c) for details).
 20. The California Legislature enacted legislation in 2014 which exempts insurers whose insureds have accepted earthquake coverage that does not meet the minimum coverage requirement but has been approved by the insurance commissioner from being required to offer earthquake coverage with minimum requirements at the renewal. This exemption would apply provided the insured has been offered a renewal and received written notice regarding available earthquake coverage.
 21. The California Legislature enacted legislation in 2014 which prohibits property, liability, or health insurance policies issued on or after January 1, 2015 from being issued until the applicant has had the opportunity to receive notice of lapse, termination, expiration, nonrenewal or cancellation as a result of nonpayment.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
California	§1775.5 §1780.56(b)	3% (+ stamping fee of .2%) (60 days or annual based on prior year tax amount paid).

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
California	§1760(b) Cal. Ins. Code Cal. Rev. & Tax Code §13201 Cal. Rev. & Tax Code §13210	3% (Payable on or before the 1st day of the 3rd month following the close of any calendar quarter during which a nonadmitted insurance contract took effect or was renewed.)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
California	<p>1) Employs at least 25 employees on average during the prior 12 months;</p> <p>2) Minimum \$25,000 aggregate annual premiums for insurance on all risks other than workers' compensation and health coverage; or insurance procured through full-time insurance manager or "continuously retained insurance consultant."</p> <p>"Continuously retained insurance consultant" does not include:</p> <p>a) any agent or broker through whom the insurance is being placed;</p> <p>b) any subagent or subproducer involved in the transaction; or</p> <p>c) any agent or broker which is a business organization employing or contracting with any person mentioned in clauses (a) and (b).</p>	§1764.1(c)(1)	Not codified.

From Appendix D: Surplus Lines Legislative Update 2014**CALIFORNIA**

Assembly Bill 2735 exempts insurers whose insureds have accepted earthquake coverage that does not meet the minimum coverage requirement but has been approved by the insurance commissioner from being required to offer earthquake coverage with minimum requirements at the renewal. This exemption would apply provided the insured has been offered a renewal and received written notice regarding available earthquake coverage. **This bill was enacted on September 18, 2014.**

Assembly Bill 1804 prohibits property, liability, or health insurance policies issued on or after January 1, 2015 from being issued until the applicant has had the opportunity to receive notice of lapse, termination, expiration, nonrenewal or cancellation as a result of nonpayment. **This bill was enacted on September 17, 2014.**



2015 Excess and Surplus Lines Laws: Colorado

By ohn P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

COLORADO

General Information:

1. Colorado **maintains** a list of eligible surplus lines insurers (see Other Comments Section #3).
2. Colorado **does** have a Surplus Lines Association (see Other Comments section #4).
3. Colorado **does not** maintain an Export List (see Other Comments section #5).
4. Colorado **does** have an industrial insured exemption (see Appendix C) which will remain in effect and also recognizes the exempt commercial purchaser exemption under NRRRA although it is not yet codified.
5. **Surplus lines tax:** 3%.
6. Colorado has not adopted legislation authorizing the state to participate in any tax sharing agreement.

Eligibility and Filing Requirements (All Insurers):

Application and **fees** as set forth below are **voluntary** if company wishes to be included on eligibility list:

1. **Filing Fee:** non-refundable filing fee of \$1,205 (\$4,175 if company's Colorado premium is between \$1,000,001 and \$10 million; \$5,510 if company's Colorado premium exceeds \$10 million).
2. **Other items** determined to be necessary by the Commissioner as warranted by any special circumstances.
3. **Gross premium report:** by March 1 (must be submitted electronically on excel spreadsheet).

4. Except for gross premium report, all requalification filings must be mailed to Colorado DOI via postal service or overnight mail. Electronic filings will not be accepted.

Eligibility and Filing Requirements (Alien Insurers Only):

1. No filings required if company is on IID List.
2. Filing fee required if company wishes to be included on Colorado's eligibility list.

Eligibility and Filing Requirements (Foreign Insurers Only):

1. **Capital and Surplus:** \$15,000,000.
2. **Licensed in home state** (remaining requirements necessary only if company wishes to be included on eligibility list).
3. A certified copy of the most recent **Report of Examination** and company's response.
4. **Certificate of Deposit** evidencing a minimum \$2,500,000 market value.
5. **Certificate of Authority/Compliance** which must specify authorized lines in the state of domicile or port of entry.
6. **Auditors Report.**
7. Unless a foreign insurer files their annual statement electronically with the NAIC, a hard copy of that document is also required.
8. In the case of an insurance exchange, provide evidence that the exchange meets the requirements of section 10-15-108(1)(b)(11), C.R.S.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Insurance on vessels or crafts or their hulls or cargoes or on marine builders' risks or marine protection and indemnity or other risks, including strikes and war risks commonly insured under ocean or wet marine forms of policy.
2. Insurance on subjects located, resident, or to be performed wholly outside Colorado or on vehicles or aircraft owned and principally garaged outside Colorado.
3. Insurance on the operations of railroads engaged in transportation in interstate commerce and their property used in such operations.
4. Insurance on aircraft owned or operated by manufacturers of aircraft or on aircraft operated in commercial scheduled interstate flight or the cargo of such aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of such aircraft.
5. Insurance on satellites or other devices intended for launch beyond the earth's atmosphere.

Other Comments or Requirements:

1. Brokers placing exempted coverages above are required to keep a full and true record, for not less than three years, of each such coverage in the same detail as required for surplus lines insurance. The record must be kept available in the State for examination by the Commissioner of Insurance.
2. Commissioner may approve insurance pools, underwriting associations or other programs on a non-admitted basis.
3. "Approved" list may be obtained from the Dept's website: www.dora.state.co.us/insurance.
4. The Surplus Lines Association of Colorado is no longer gathering tax data on behalf of the DOI but otherwise continues to be active on a local and national level. Contact information is as follows:

John Wethy
 Surplus Lines Association of Colorado
 3570 E. 12th Avenue
 Denver, Colorado 80206
 Phone: (303) 331-9399
 Fax: (303) 331-9006
 Email: surplusline@earthlink.net

The Association also maintains a website at www.colosla.org.

5. Although Colorado does not have an export list, there is a provision in the statute that relieves the due diligence requirement with respect to placements made on behalf of "exempt commercial policyholders" as defined in Section 10-4-1402 of the Colorado Insurance Laws.
6. All surplus lines insurance contracts must include the following:

This contract is delivered as surplus line insurance under the Nonadmitted Insurance Act. The insurer issuing this contract is not admitted in Colorado but is an approved nonadmitted insurer. There is no protection under the provisions of the Colorado Insurance Guaranty Association Act.

If the policy is written on a claims-made basis, the following must also appear on the policy:

This policy is a claims-made policy which provides liability coverage only if a claim is made during the policy Period or any applicable extended reporting Period.

If an automobile policy does not provide the basic complying policy coverages in section 10-4-620, C.R.S. the following must appear on the policy:

This policy does not meet the statutory requirements of this State's financial responsibility laws. It does not provide liability coverage for bodily injury and property damage.

The provisions of section 10-5-101.5 (1)(b), C.R.S. shall apply to policies of property and casualty insurance issued or delivered in Colorado by an unauthorized insurer affording coverage only on property located temporarily or permanently, or operations conducted temporarily or permanently outside the boundaries of the United States of America, its territories or possessions when the policy is placed by licensed property and casualty producers or brokers of this state, who shall remain responsible for verifying that the insuring company is licensed or authorized by the appropriate regulatory bodies to transact the business of insurance in that jurisdiction, and contains the following disclaimer:

This policy is issued by an insurance company that is not regulated by the Colorado Division of Insurance. The insurance company may not provide claims service and may not be subject to service of process in Colorado. If the insurance company becomes insolvent, insureds or claimants will not be eligible for protection under Colorado insurance law.

These required disclosures must be affixed to the declaration page of the contract given to the insured. A copy, bearing the disclosures, must also be maintained by the broker. In the case of the issuance of a binder prior to the formal policy, such disclosure must also appear on the binder.

7. The Surplus Lines Association of Colorado issued a Bulletin in 2014 to clarify home state rules in Colorado. The Bulletin clarifies that if an insured is headquartered in Colorado but has locations in other states, 100% of the tax is payable to Colorado.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Colorado	§10-5-111	3%

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Colorado	§10-3-903(2)(d) §10-3-209 §10-3-909 §10-5-111 §10-5-111.5	3% (annually)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Colorado	<p>1) Insurance (excluding life and annuity contracts) procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant who does not receive commission or compensation for placing the risk;</p> <p>2) Minimum \$100,000 aggregate annual premiums on all risks; and</p> <p>3) Minimum 100 full-time employees.</p>	§10-3-910(2)	Not codified.

From Appendix D: Surplus Lines Legislative Update 2014

COLORADO

A **Bulletin** from the Surplus Lines Association of Colorado was issued to clarify home state rules in Colorado. The Bulletin clarifies that if an insured is headquartered in Colorado but has locations in other states, 100% of the tax is payable to Colorado.



2015 Excess and Surplus Lines Laws: Connecticut

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

CONNECTICUT

General Information:

1. Connecticut **does** maintain a list of eligible surplus lines insurers (see Other Comments section #1).
2. Connecticut **does not** have a Surplus Lines Association.
3. Connecticut **does** maintain an Export List (see Other Comments section #1).
4. Connecticut **does** have an industrial insurance exemption (see Appendix C) and also recognizes the exempt commercial purchaser exemption under NRRRA.
5. **Surplus lines tax:** 4% payable by broker. State of Connecticut, its agencies and municipalities, are tax exempt.
6. Connecticut adopted **NIMA** (HB 6652, Public Act #11-61) effective June 29, 2011, but subsequently submitted notice of withdrawal from **NIMA** on April 2012.

Eligibility and Filing Requirements (Alien Insurers Only):

1. No fee.
2. **Letter of intent** regarding company's plan to write in Connecticut.
3. Must be included on the IID list.
4. **Power of Attorney Form** (on CT DOI website).
5. **Form SL-2** (on CT DOI website).

Eligibility and Filing Requirements (Foreign Insurers Only):

1. **Capital and Surplus:** \$15,000,000.
2. **Letter of intent** regarding company's plan to write in Connecticut.
3. **Certificate of Compliance** from state of domicile.
4. **Annual Statement** and quarterly reports.
5. **Power of Attorney** (on CT DOI website).
6. **Filing fee** (eligibility): \$1,000.
7. **Renewal fee:** \$126.
8. **Form SL-2** (on CT DOI website).

Types of Insurance Exempted from Surplus Lines Regulation:

Industrial Insurance, which is defined as "(i) an insured which procures the insurance of any risk by the use of the services of a full-time employee acting as an insurance manager or buyer on the services of a regularly and continuously retained qualified insurance consultant and (ii) whose aggregate annual premiums for insurance, including life, accident and health insurance, total at least fifty thousand dollars."

Other Comments or Requirements:

1. A schedule of insurers authorized to underwrite in Connecticut can be obtained from the Department's website at www.ct.gov/cid. Companies coded with a "K" are authorized surplus lines insurers. Connecticut's Export list can be found at www.ct.gov/cid/lib/cid/licencom.pdf.
2. The Connecticut insurance regulations were amended in 2009 to permit electronic filing of surplus lines insurers annual statements.

3. On February 24, 2011, the Connecticut Insurance Department issued **Bulletin No. FS-4SL-10 (Revised)** which eliminates the SL-10 Quarterly Report (Connecticut premiums by broker) from the list of requalification requirements for eligible surplus lines insurers in Connecticut.
4. The Connecticut Legislature enacted legislation in 2013 which revises the Connecticut surplus lines law by replacing affidavits with signed statements setting forth facts showing that the licensee and insured were unable after a diligent effort to procure, from any authorized insurer or insurers, the full amount of insurance required to protect the interest of such insured. It also requires the type of policy, and if such policy is for real property, the location of such property. The licensee shall file such signed statements in electronic format with the Commissioner on 2/15, 5/15, 8/15 and 11/15 of each year.
5. The following disclosure statement is required on all surplus lines policies issued in Connecticut. Each such policy shall bear on its cover, in not less than twelve-point boldface type, in capital letters, the following:

NOTICE

THIS IS A SURPLUS LINES POLICY AND IS NOT PROTECTED BY THE CONNECTICUT INSURANCE GUARANTY ASSOCIATION OR SUBJECT TO REVIEW BY THE CONNECTICUT INSURANCE DEPARTMENT. IT IS IMPORTANT THAT YOU READ AND UNDERSTAND THIS POLICY.

6. The Connecticut Legislature enacted Legislation in 2014 which requires surplus lines carriers to use the standard fire policy form, although surplus lines commercial lines policies are permitted to define depreciation differently than the standard form requirement. However, for personal lines policies, surplus lines must adhere to the "like kind and quality" language of the standard fire form.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Connecticut	§38a-743	4% (quarterly)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Connecticut	§38a-271 §38a-277(c)	4% (annually) (excluding wet marine and transportation)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Connecticut	1) Insurance procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant; and 2) Minimum \$50,000 aggregate annual premiums (excluding life, accident and health insurance).	§38a-271(b)(6)	Conn. Gen. Stat. § 38a-741(b)(2); Bulletin SL-2 (July 18, 2011) Same as NRRA

From Appendix D: Surplus Lines Legislative Update 2014

CONNECTICUT

House Bill 5502 requires surplus lines insurers to make certain disclosures on insurance policy forms and follow specific requirements for homeowners' policies with the required standard fire policy form, including certain cost and depreciation requirements. **This bill was enacted on June 11, 2014.**

House Bill 5366 required surplus lines carriers to use the standard fire policy form, although surplus lines commercial lines policies would be permitted to define depreciation differently than the standard form requirement. However, for personal lines policies, surplus lines must adhere to the "like kind and quality" language of the standard fire form. This particular bill did not pass, but at the last hour of the session, the bill's language was added into HB 5502, which did pass.



2015 Excess and Surplus Lines Laws: Delaware

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

DELAWARE

General Information:

1. Delaware **maintains** a list of registered surplus lines insurers (see Other Comments section #1).
2. Delaware **does not** have a Surplus Lines Association.
3. Delaware **does not** have an Export List.
4. Delaware **does** have an industrial insured exemption with respect to captive insurers only (see Appendix C) but otherwise recognizes the exempt commercial policyholder exemption under NRRRA.
5. **Surplus lines tax:** Three percent, effective July 30, 2014.
6. Delaware has not affiliated with any existing compact but Commissioner has been authorized to enter into an interstate cooperative agreement, reciprocal agreement, or compact (SB 109) Effective: July 21, 2011.

Eligibility and Filing Requirements (Alien Insurers Only):

Brokers may place insurance with alien insurers that are listed on the Quarterly Listing of Alien Insurers maintained by the NAIC. §193(a).

Eligibility and Filing Requirements (Foreign Insurers Only):

1. A surplus lines broker may not place coverage with a nonadmitted foreign insurer unless, at the time of placement, the nonadmitted insurer possesses capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements

under the laws of Delaware or \$15 million. Delaware does not impose a licensure eligibility requirement.

2. The commissioner may waive the minimum capital and surplus requirement for a nonadmitted insurer if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. §1931(a).

Types of Insurance Exempted from Surplus Lines Regulation:

1. Wet marine and transportation insurance (see other comments section #3).
2. Insurance on subjects located, resident or to be performed wholly outside Delaware or on vehicles or aircraft owned and principally garaged outside Delaware.
3. Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.
4. Insurance of aircraft owned or operated by manufacturers of aircraft or of aircraft operated in commercial interstate flight or cargo of such aircraft or against liability, other than workers' compensation and employers' liability, arising out of ownership, maintenance or use of such aircraft.

Other Comments or Requirements:

1. The link for the Delaware list is available at <http://delawareinsurance.gov/departments/berg/SurplusBull5.shtml>. The list the DE DOI publishes is limited to those insurers that have voluntarily registered with the DE DOI by formally expressing a wish to be included on the list and by presenting the Commissioner with evidence of their qualifications as an eligible nonadmitted insurer under the NRRRA requirements. Companies that do not follow the registration process will not be included on the listing of Surplus Lines Insurers published by the DE DOI, even though they may be eligible nonadmitted insurers. Being on the listing does not limit any company's eligibility and it is not an eligibility requirement.
2. Business entities cannot transact surplus lines business, only individual brokers. Tax reports must be made by (or on behalf of) individual surplus lines brokers. Agencies should NOT make tax filings.
3. There is a five percent tax on wet marine and transportation insurance.
4. The Delaware Nonadmitted Insurance Act [SB 109], enacted in 2011, created a new category of insurance company, referred to as a Delaware "Domestic Surplus Lines Insurer." This insurer category differs from others in that it allows a Delaware-domiciled insurer to be treated as nonadmitted in Delaware for particular business purposes. A Delaware domestic surplus lines insurer will be domiciled and admitted in Delaware but, unlike all other Delaware-domiciled insurers, can write surplus lines policies in Delaware.
5. Every insurance contract procured and delivered as surplus lines coverage pursuant to this law shall have stamped or printed upon it, initialed by and bearing the name of the individual surplus lines broker who procured it, the following disclosure statement:

This insurance contract is issued pursuant to the Delaware Insurance Laws by an insurer neither licensed by nor under the jurisdiction of the Delaware Insurance Department. This insurer does not participate in insurance guaranty funds created by state law. In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.

6. The Delaware DOI issued a clarifying Bulletin in 2014 regarding the Statement of Surplus Lines Diligent Effort Form SL-1923. It continues to be the responsibility of the surplus lines broker to retain the SL-1923 in his or her files. However, the main purpose of the Bulletin is to highlight a requirement that to be a valid affidavit it must be notarized. The SL-1923 form was changed in 2013 to add a notary signature in accordance with specific Delaware legal requirements.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Delaware	§1925	3%

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Delaware	18 § 1925(b) and (e) 18 § 1926(d)	3% (annually)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Delaware	1) Insurance procured through full-time insurance manager or buyer; and 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees. No information regarding taxes. Subject to taxes specific to captives under §6914.	§6902(16)	§1914(b); Surplus Lines Bulletin 9 (August 16,2011) Same as NRRA Subject to 2% tax for new and renewal policies with an effective date on or after July 21, 2011. Surplus Lines Bulletin 9 (August 16, 2011).

From Appendix D: Surplus Lines Legislative Update 2014**DELAWARE**

The Delaware Department of Insurance issued a clarifying bulletin regarding the Statement of Surplus Lines Diligent Effort Form SL-1923. It continues to be the responsibility of the surplus lines broker to retain the SL-1923 in his or her files. However, the main purpose of the bulletin is to highlight a requirement that to be a valid affidavit it must be notarized. The SL-1923 form was changed in 2013 to add a notary signature in accordance with specific Delaware legal requirements.



2015 Excess and Surplus Lines Laws: District of Columbia

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

DISTRICT OF COLUMBIA

General Information:

1. District of Columbia **does not maintain** a list of eligible surplus lines insurers.
2. District of Columbia **does not** have a Surplus Lines Association.
3. District of Columbia **does not** have an Export List.
4. District of Columbia **does not** have an industrial insured exception but does recognize the exempt commercial purchaser exemption under NRRRA.
5. **Surplus lines tax:** 2%, payable by broker.
6. DC has not entered into a multistate agreement or compact for tax allocation purposes.

Eligibility and Filing Requirements (Alien Insurers Only):

DC may not prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the U.S. that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

Eligibility and Filing Requirements (Foreign Insurers Only):

DC may not impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a U.S. jurisdiction, except:

- DC may require that the insurer be authorized to write the type of insurance limits domiciliary jurisdiction; and

- DC may require that the insurer have capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:
 - The minimum capital and surplus requirements under the law of DC; or
 - \$15,000,000

The insurance commissioner may waive the minimum capital and surplus requirements above if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million.

Types of Insurance Exempted from Surplus Lines Regulation:

None.

Other Comments or Requirements:

1. DC has no formal process for approving unauthorized insurers. However, the burden is on the surplus lines broker to establish that:
 - A local market is unavailable for the insurance to be placed, and
 - The surplus lines insurer accepting the business is financially sound.
 - There is no refund tax for cancellations or reduction in premium (other than for flat cancellation).

2. DC insurance statutes and regulations do not address disclosure requirements in surplus lines policies. However, under the Unfair Trade Act (the "Act"), a notice should be provided or the company could be in violation of the Act.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
District of Columbia	§31-2502.40	2% (semi-annually)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
District of Columbia	----	----

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
District of Columbia	No	----	Not codified.



2015 Excess and Surplus Lines Laws: Florida

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

FLORIDA

General Information:

1. Florida **maintains** a list of eligible surplus lines insurers (see Other Comments section #8).
2. Florida **does** have a Surplus Lines Association/Stamping Office, the Florida Surplus Lines Service Office (FSLSO) (see Other Comments section #3).
3. Florida **does not** have an Export List (see Other Comments section #9).
4. Florida **does not** have an industrial insured exemption statute related to Surplus Lines Insurance but otherwise recognizes the exempt commercial purchaser exemption under NRRRA.
5. **Surplus lines tax:** 5% plus 0.175% service fee paid by the insured to the surplus lines agent, who remits to the FSLSO. The FSLSO service fee is applicable to single state Florida policies only.
6. Florida has adopted **NIMA** (SB 1816) Effective: June 15, 2011, to policies issued or renewed after July 1, 2011.

Florida is a member of **NIMA** which adopted a premium reporting and payment system in 2012.

Eligibility and Filing Requirements (All Insurers):

In order for a surplus lines insurer to be on Florida's list of eligible surplus lines insurers, it must go through the same eligibility application process prior to implementation of NRRRA and submit the filings listed below. These insurers will be identified on the Office of Insurance Regulation ("Office") website, under "Company Type", as "Surplus Lines". If an alien surplus lines carrier intends to operate in Florida pursuant to

NRRRA and notifies the Office of its intention to do so, then the Office will require completion of a Service of Process form by the insurer.

1. **Application:** includes service of process form.
2. **Annual Statement/Report:** certified and converted to U.S. dollars.
3. **Biographical affidavits:** investigative background report and fingerprint cards also required.
4. **Certificate of Authority.**
5. **Eligibility** must be requested by Florida Surplus Lines Service Office as a condition of Department approval.
6. **Gross Premium Report** (filed electronically) due quarterly for foreign surplus lines insurers and annually for alien surplus lines insurers.

Report must include risks exempt from surplus lines tax.

7. Priority Operating History.

Eligibility and Filing Requirements (Alien Insurers Only):

1. **Trust Fund:** \$5,400,000 (not required for alien insurers writing ocean marine and/or aviation risks only).
2. **Capital and Surplus:** \$15,000,000 in aggregate.
3. **IID Financial Format** (Electronic filing is required): due July 31.
4. **Electronic premium submission:** due June 30.

Alien surplus lines insurers that notify the Office of their intention to operate under NRRA will be identified on the Office's website as "Surplus Lines – Federally Authorized".

Eligibility and Filing Requirements (Foreign Insurers Only):

1. **Report of Examination.**
2. **Certificate of Compliance.**
3. **Quarterly Financial Statements** and most recent annual statement.
4. **Report of Auditors.**
5. **Surplus:** \$15,000,000.
6. Verified report of all surplus lines insurance

Transacted for insurance risks located in Florida during each calendar quarter must be filed with the FLSO on or before the end of the month following each calendar quarter.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Wet marine and transportation risks (see Other Comments section #1).
2. Aviation risks, including airport and products liability incidental thereto and hanger keepers liability (see Other Comments Section #1).

Other Comments or Requirements:

1. Exempted coverages listed above may be exported under the following requirements: placement through licensed Florida surplus lines agent and eligibility with Florida Office of Insurance Regulation for such coverages based on finding that insurer is able to meet its financial obligations. Sec. (FLDOI) 626.918 (5) of the Florida Insurance Code also allows a Florida surplus lines agent to place a risk, in whole or in part, with an unauthorized insurer (i.e., one not on the Florida eligibility list) that is otherwise eligible for export in the surplus lines market, but cannot be procured from eligible surplus lines insurers, as long as certain conditions are met. These conditions include: 1) A signed statement from the Florida agent with the Florida Office of Insurance Regulation (OIR) setting forth such facts and the % of the risk placed with the unauthorized insurer; 2) a \$50,000 deposit with the FLDOI by the unauthorized insurer for each such

risk; 3) the filing by the Florida agent of a certified copy of the insurer's statement of condition as of year-end showing that the insurer has net assets at least equal to the amount required for licensed companies in the state; 4) a signed statement by the insured contained in the policy, binder or cover note, confirming, among other things, that the insured is aware that the insurer in question is not approved in Florida.

However, subsection (6) of this section states that when not more than 12.5% of the risk is so eligible for placement with an unauthorized insurer in Florida under subsection 5 of this statute, than the OIR may, at its discretion, only require the agent to obtain a signed statement as noted in item 4 above before placing the risk.

2. Insurer must have three years business history (requirement may be waived if insurer provides not readily available product or has operated for one year and has combined capital and surplus of \$25,000,000).

3. Contact information for the FLSO is as follows:

Florida Surplus Lines Service Office
Gary D. Pullen, Executive Director
1441 Maclay Commerce Drive, Suite 200
Tallahassee, Florida 32312
Phone: (850) 224-7676
Fax: (850) 513-9624
Email: gpullen@fslso.com

4. Florida allows for the issuance of a non-resident surplus lines agent license to a non-resident individual provided that the individual is licensed in his or her home state as a resident general lines and a resident surplus lines agent. There is an additional requirement that, under the laws of the individual's home state, residents of Florida may be licensed in a similar manner as a non-resident surplus lines agent in the applicant state.
5. The current Citizens Property Emergency assessment rate is 1%.
6. Florida requires a retail agent to inform a policyholder that coverage may be available and less expensive from Citizens Property Insurance Corporation ("Citizens") before export to the surplus lines insurance market. The notice must also include information that Citizens assessments are higher and that Citizens coverage may not be less than the property's existing coverage.

7. The Florida Hurricane Catastrophe Fund of 1.3% will no longer be assessed for policies issued or renewed with an effective date on or after January 1, 2015. For policies issued or renewed with an effective date between January 1, 2011 – December 31, 2014 and all subsequent endorsements to those policies, the Florida Hurricane Catastrophe Fund Assessment will continue to be charged at 1.3%. For policies issued or renewed with an effective date between January 1, 2007 – December 31, 2010, and all subsequent endorsements to those policies, the Florida Hurricane Catastrophe Fund assessment will continue to be charged at 1.0%.
8. Links to information concerning those companies authorized to do business in Florida is contained at the following website of the Florida Surplus Lines Service Office www.fslso.com/tools/insurer.aspx.
9. Florida does not have an export list per se, but rather an amendment was made in 2011 to the statutory provisions contained in §626.916 (3)(b) exempting certain deregulated commercial lines coverages from the diligent search requirement. A link to these deregulated commercial lines coverages can be found at <http://www.fslso.com/publications/forms/matrix.pdf>. This exemption applies to classes of insurance which are referenced in § 627.062(3) (d)1 as exempt from rate regulation. These classes may be exportable under the following conditions:
- The insurance must be placed only by or through a surplus lines agent licensed in this state;
 - The insurer must be made eligible under § 626.918; and
 - The insured must sign a disclosure that substantially provides the following: "You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer." If the notice is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no cause of action arises against, the retail agent presenting the form.
10. Any eligible surplus lines insurer who fails to file a report in the form and within the time required or provided for in the Surplus Lines Law may be fined up to \$500 per day for each day such failure continues, beginning the day after the report was due, until the date the report is received. Failure to file a report may also result in withdrawal of eligibility as a surplus lines insurer in this state. All sums collected by the FLDOI under this section shall be deposited into the insurance Regulatory Trust Fund. sec. 626.9361 Florida Insurance Code.
11. The Florida legislature enacted the following legislation in 2009:
- Section 626.913(4), Florida Statutes, was added which states "Except as may be specifically stated to apply to surplus lines insurers, the provisions of chapter 627 do not apply to surplus lines insurance authorized under ss. 626.913-626.937, the Surplus Lines Law. Chapter 627 is titled "Insurance Rates and Contracts."
 - Section 626.924(2), Florida Statutes, was added which states "Surplus lines policies issued on or after October 1, 2009, shall have stamped or printed on the face of the policy in at least 14-point, boldface type, the following statement: SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY".
 - Section 626.9371, Florida Statutes, was added and states:
 - (1) The premiums for surplus lines insurance contracts issued on or after October 1, 2009, in this state or covering risks located in this state shall be paid in cash consisting of coins, currency, checks, or money orders or by using a debit card, credit card, automatic electronic funds transfer, or payroll deduction plan.
 - (2) All payments of claims made in this state under any contract of surplus lines insurance issued on or after October 1, 2009, shall be made:

- (a) In cash consisting of coins, currency, checks, drafts, or money orders and, if made by check or draft, shall be in such form as will comply with the standards for cash items adopted by the Federal Reserve System to facilitate the sorting, routing, and mechanized processing of such items; or
 - (b) By debit card or any other form of electronic transfer if authorized in writing by the recipient or the recipient's representative. Any fees or costs to be charged against the recipient must be disclosed in writing to the recipient or the recipient's representative at the time of written authorization. However, the written authorization requirement may be waived by the recipient or the recipient's representative if the insurer verifies the identity of the insured or the insured's recipient and does not charge a fee for the transaction. If the funds are misdirected, the insurer remains liable for the payment of the claim.
- Section 626.9372, Florida Statutes, was added and states:
- (1) Each insurer that provides or may provide liability insurance coverage to pay all or a portion of any claim that might be made under surplus lines policies issued on or after October 1, 2009, shall provide, within 60 days after the written request of the claimant, a statement of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:
 - (a) The name of the insurer.
 - (b) The name of each insured.
 - (c) The limits of the liability coverage.
 - (d) A statement of any policy or coverage defense that such insurer reasonably believes is available to such insurer at the time of filing such statement.
 - (e) A copy of the policy. In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and forward such request for information as required by this subsection to all affected insurers. The insurer shall supply the information required in this subsection to the claimant within 60 days after receipt of such request.
 - (2) The statement required by subsection
 - (a) must be amended within 60 days after the date of discovery of facts necessitating an amendment to such statement.
- Section 626.9373, Florida Statutes, was added and states:
- (1) Upon the rendition of a judgment or decree by any court of this state against a surplus lines insurer in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer on or after the effective date of this act, the trial court or, if the insured or beneficiary prevails on appeal, the appellate court, shall adjudge or decree against the insurer in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the lawsuit for which recovery is awarded.
 - (2) If awarded, attorney's fees or compensation shall be included in the judgment or decree rendered in the case.
- Section 626.9374, Florida Statutes, was added and states:
- (1) Any surplus lines, personal lines residential property insurance policy issued on or after October 1, 2009, containing a separate hurricane or wind deductible must on its face include in at least 14-point, boldface type the following statement: THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE OR WIND LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU.

(2) A surplus lines, personal lines residential property insurance policy issued on or after October 1, 2009, containing a coinsurance provision applicable to hurricane or wind losses must on its face include in at least 14-point, boldface type the following statement: THIS POLICY CONTAINS A CO-PAY PROVISION THAT MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU.

12. Effective June 5, 2012, Florida surplus lines agents and Independently Procured Coverage (IPC) filers are no longer required to report Non-US premium allocations on multi-state policy filings to the Florida Surplus Lines Service Office (FSLSO). Non-US premium is defined as premium charged on exposures occurring or located outside of the United States and its territories. Multi-state policies bearing non-US premium previously filed with the FSLSO will receive a credit or refund on any taxes paid on the non-US allocated portion. Surplus lines agents and IPC filers are not required to complete any corrective action on policy filings in order to receive the applicable credits for amounts previously paid. However, agents and IPC filers are responsible for providing a credit or refund to policyholders.

13. In 2011 Florida amended 626.916 to eliminate the agent diligent search effort requirements for all commercial lines referenced under F.S. 627.062. Effective July 1, 2011, agents are no longer required to complete a Diligent Effort form (showing declinations from 3 licensed carriers) prior to the placement of the following commercial classes of coverages:

- Excess or Umbrella
- Surety and Fidelity
- Boiler and Machinery and Leakage and Fire Extinguishing Equipment
- Errors and Omissions
- Directors and Officers, Employment Practices, and Management Liability
- Intellectual Property and Patent Infringement
- Advertising Injury and Internet Liability
- Property risks rated under a highly protect risks rating plan

- Other types of Commercial Lines insurance as determined by the OIR
- Fiduciary Liability
- General Liability
- Nonresidential Property (except for collateral protection insurance as defined in F.S. 624.6085)
- Nonresidential Multi-Peril
- Excess Property
- Burglary and Theft

(During the 2013 legislative session additional lines of coverage were added to the above list which exempts medical malpractice insurance covering certain providers and practitioners from rate filing requirements under 627.062(3)(d)1 therefore deleting diligent effort in Florida's export law.)

For the above risks, a signed disclosure statement is required in place of the Diligent Effort form.

14. Each surplus lines agent through whom a surplus lines coverage is procured must write or print on the outside of the policy and on any certificate, cover note, or other confirmation of the insurance his or her name, address, and identification number and the name and address of the producing agent through whom the business originated and must have stamped or written upon the first page of the policy or the certificate, cover note, or confirmation of insurance the words:

THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER.

15. The Florida Legislature enacted legislation in 2012 which eliminates the bond requirement for non-resident brokers.

16. The Florida Legislature enacted the following legislation in 2014 with regard to non-resident agent licensing requirements.

- The Non-Resident Surplus Lines Licensing laws Florida Statutes 626.9272 were amended. The new language removes the required experience, coursework and examination for those agents located in a state that a Surplus Lines exam is required for licensure. Please consult the Florida Department of Financial Services website for further details.
 - Florida Statute 627.952 was amended to require non-resident agents **representing Florida Risk Purchasing Groups**, to be licensed and appointed as a Florida non-resident surplus lines agent and removes the current fidelity bond requirement.
17. The Florida Legislature enacted legislation in 2014 to allow for the export of flood insurance to the surplus lines market without the requirement of seeking three declinations from the admitted market. The new law has a sunset provision of July 2017 but can be extended at that time.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Florida	§626.932, §626.921(f)	5% (not wet marine and transportation), plus 0.175% service fee paid by the insured to the surplus lines agent, who remits to the FLSLO.

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Florida	§626.938(3)	5% plus 0.2% service fee payable to the FLSLO (decreasing to 0.175% effective 4/1/2014) (Insured must also report the premium to the FLSLO using forms designated by the FLSLO or in a computer readable format.)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Florida	No.	§ 626.938	Industrial exemption/not codified. Recognizes Independently Procured coverage.

From Appendix D: Surplus Lines Legislative Update 2014

FLORIDA

The Florida Office of Insurance Regulation (FOIR) issued a Memorandum in 2014 notifying surplus lines insurers that the Florida Hurricane Catastrophe Fund's emergency 1.3% assessment has been eliminated for all policies issued or renewed on or after January 1, 2015.

The Florida Surplus Lines Services Office (FSLSO) announced the reduction of its service fee from 0.2% to 0.175% effective April 1, 2014. This fee applies to single-state Florida policies only.

Senate Bill 542/House Bill 879 pertains to private flood insurance and includes a provision to allow the export of flood insurance to the surplus lines market without the requirement of seeking three declinations from the admitted market. The new law has a sunset provision of July 2017 but can be extended at that time. **This bill was enacted on June 13, 2014.**



2015 Excess and Surplus Lines Laws: Georgia

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

GEORGIA

General Information:

1. Georgia **does not** maintain a list of eligible surplus lines insurers.
2. Georgia **does not** have a Surplus Lines Association.
3. Georgia **does not** have an Export List.
4. Georgia **does** have an industrial insured exemption with respect to captive insurers only (see Appendix C) but otherwise recognizes the exempt commercial policyholder exemption under NRRRA.
5. **Surplus lines tax:** If a surplus line policy covers risks or exposures located or to be performed both in and out of Georgia, the sum payable shall be computed based on (i) an amount equal to 4% of that portion of premiums allocated to Georgia plus (ii) an amount equal to the portion of premiums allocated to other states or territories on the basis of the tax, rates and fees applicable to properties, risks, or exposures located or to be performed outside Georgia.
6. Georgia has not affiliated with any existing compact (HB 413) However, Georgia enacted legislation in 2011 authorizing the Governor, in consultation with the Insurance Commissioner, to enter into a tax sharing agreement. The agreement must substantially follow the form of either SLIMPACT or NIMA as they exist on July 1, 2011. The Governor must select "the agreement, if any, that provides the best financial advantage to the state."

Effective: July 1, 2011.

Eligibility and Filing Requirements (Foreign Insurers Only):

Surplus lines brokers may not place coverage with a nonadmitted insurer unless, at the time of placement, the nonadmitted insurer:

- Is authorized to write such insurance in its domiciliary jurisdiction; and
- Possesses capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of Georgia or \$15 million. § 33-5-25(b)(1)(A).

The Commissioner may waive the minimum capital and surplus requirement for a nonadmitted insurer if he makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The director may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 33-5-25(b)(1)(A).

Eligibility and Filing Requirements (Alien Insurers Only):

Georgia utilizes the NAIC Quarterly List of Alien Insurers.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Insurance on property or operation of railroads engaged in interstate commerce.
2. Insurance of aircraft owned or operated by manufacturers of aircraft or operated in scheduled interstate flight, or cargo of the aircraft, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of the aircraft.

Other Comments or Requirements:

1. Surplus lines insurers are required to furnish their brokers with a copy of their annual statement/report.
2. Every insurance contract procured and delivered as a surplus lines coverage must be initialed by or bear the name of the surplus lines broker who procured it and must have printed or stamped upon it the following:

This contract is registered and delivered as a surplus line coverage under the Surplus Line Insurance Law, O.C.G.A. Chapter 33-5.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Georgia	§33-5-31	4% (quarterly)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Georgia	§33-5-33(b)	4% (within 30 days)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Georgia	<p>1) Insurance procured through full-time insurance manager, risk manager or insurance buyer, or through licensed property and casualty agent, broker or counselor;</p> <p>2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and</p> <p>3) one of the following criteria:</p> <p>a) Minimum 25 full-time employees;</p> <p>b) Minimum \$3 million gross assets; or</p> <p>c) Minimum \$5 million annual gross revenues.</p> <p>Subject to taxes specific to captives under §33-41-22.</p>	§33-41-2(5)	<p>§33-5-20.1(1); Bulletin 11-EX-3 (September 12, 2011)</p> <p>Same as NRRA</p> <p>Subject to 4% tax (within 30 days). §33-5-33(a); Bulletin 11-EX-3 (September 12, 2011).</p>



2015 Excess and Surplus Lines Laws: Hawaii

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

HAWAII

General Information:

1. Hawaii **does not** maintain a list of eligible surplus lines insurers.
2. Hawaii **does not** have a Surplus Lines Association.
3. Hawaii **does not** have an Export List.
4. Hawaii **does not** have an industrial insured exemption but does recognize the exempt commercial purchaser exemption under NRRRA.
5. **Surplus lines tax:** 4.68%, payable by broker.
6. On June 7, 2012, Hawaii submitted a notice of withdrawal from **NIMA**. All quarterly surplus lines taxes for policies (both multi-state and single-state) where Hawaii is deemed the home state should be filed with the Hawaii Insurance Division.

Eligibility and Filing Requirements (All Insurers):

Hawaii does not impose a fee or request financial premium or other information from foreign and/or alien surplus lines insurers for surplus lines eligibility purposes. Under Hawaii's surplus lines laws, the surplus lines broker is responsible for determining if the surplus lines insurer meets the eligibility requirements under our laws.

Eligibility and Filing Requirements (Alien Insurers Only):

Insurer must be on IID list, provided that (a) if an alien insurer is not on the IID list, the surplus lines broker shall maintain in the broker's office evidence of the financial responsibility of the insurer; and (b) evidence to the commissioner that the insurer maintains in the United States a \$5,400,000 trust fund.

Eligibility and Filing Requirements (Foreign Insurers Only):

1. Surplus lines broker may place surplus lines insurance only with insurers who are authorized to write that type of insurance in the insurer's domiciliary state.
2. A surplus lines broker may not place coverage with an unauthorized insurer unless, at the time of placement, the surplus lines broker has determined that the unauthorized insurer has capital and surplus or its equivalent under the laws of its domiciliary state that equal the greater of the minimum capital requirements of this State or a minimum of \$15,000,000.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Ocean marine insurance.
2. Insurance on subjects located, resident, or to be performed wholly outside Hawaii, or on vehicles or aircraft owned and principally garaged outside Hawaii.
3. Insurance of aircraft or cargo of such aircraft, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of such aircraft.

Other Comments or Requirements:

1. Upon request of the Commissioner, the broker must immediately submit documentary evidence as to the financial responsibility of the insurer.
2. Hawaii enacted legislation in 2011 which defines "Surplus lines insurance" to mean "any property and casualty insurance on risks procured from or placed with an unauthorized insurer under the laws of the insured's home state."

3. Every insurance contract procured and delivered as surplus lines coverage, including any evidence of insurance other than a policy, must:

- Bear the name and address of the surplus lines broker who procured it, and
- Have stamped or written conspicuously upon the first page of the contract the following:

This insurance contract is issued by an insurer which is not licensed by the State of Hawaii and is not subject to its regulation or examination. If the insurer is found insolvent, claims under this contract are not covered by any guaranty fund of the State of Hawaii.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Hawaii	§431:8-315	4.68% (quarterly)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Hawaii	§431:8-205(c)	4.68% (within 60 days)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Hawaii	No	----	<p>§431:8-102; Memorandum 2011-4E (October 18, 2011)</p> <p>Same as NRRRA</p> <p>Subject to 4.68% tax (within 45 days after the end of the calendar quarter in which the insurance was procured, continued, or renewed). §431:8-205(b) and (c); Memorandum 2011-4E (October 18, 2011).</p>



2015 Excess and Surplus Lines Laws: Idaho

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

IDAHO

General Information:

1. Idaho **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Idaho **does** have a Surplus Lines Association (see Other Comments section #2).
3. Idaho **does** have an Export List (see Other Comments section #3).
4. Idaho **does not** have an industrial insured exemption but does recognize the exempt commercial purchaser exemption under NRRRA.
5. **Surplus lines tax:** 1.5% (plus stamping fee of 0.25%), payable by broker.
6. Idaho **has not** affiliated with any existing compact (HB 179).

Eligibility and Filing Requirements (All Insurers):

1. **Filing Fee:** \$500 with application, \$500 renewal fee: due March 1.
2. **Annual Statement/Report** (required with original application).
3. **Application or Letter of Intent** listing types of business company wishes to write, agreeing to abide by Idaho Law and that the company will only accept business placed through Idaho licensed surplus lines brokers (required with original application).
4. **Designation of Legal Agent** for Surplus Lines Companies (required with original application).

Eligibility and Filing Requirements (Alien Insurers Only):

A surplus lines broker may place insurance with an alien insurer if the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC. § 41-1214(6)(b).

Eligibility and Filing Requirements (Foreign Insurers Only):

A surplus lines broker may place insurance with a foreign insurer if:

1. The insurer is authorized to place that type of insurance in its domiciliary jurisdiction; and
2. The insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that is the greater of the minimum capital and surplus requirements under the laws of this state or \$15 million.

The insurance commissioner may waive the minimum capital and surplus requirement for unauthorized foreign insurers if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. § 41-1214(7). The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 41-1214(7).

Types of Insurance Exempted from Surplus Lines Regulation:

1. Ocean marine and foreign trade insurances.
2. Insurance on subjects located, resident, or to be performed wholly outside of Idaho, or on vehicles or aircraft owned and principally garaged outside Idaho.
3. Aircraft and cargo in interstate flight (property and liability).
4. Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in commercial scheduled interstate flight, or cargo of such aircraft, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance or use of such aircraft.

Other Comments or Requirements:

1. Eligibility lists available on Idaho DOI website www.doi.idaho.gov. Go to "Companies," under "Company Services" then scroll down to "Eligible Surplus Lines Insurers."
2. Contact information for the Idaho Surplus Lines Association is as follows:

Wendy J. Tippetts
 Surplus Lines Association of Idaho, Inc.
 595 South 14th Street
 Boise, Idaho 83702-6836
 Phone: (208) 336-2901
 Fax: (208) 336-2901
 Email: wendy@idahosurplusline.org
3. Export list available on Idaho DOI website at www.doi.idaho.gov. Laws, Rules, Bulleting, DOI Rules, 18.01.18 Open Lines for Export –Surplus Lines, OR on the Idaho Surplus Lines Association website at www.Idahosurplusline.org (on homepage).
4. Brokers placing exempted coverages above are required to keep a full and true record, for not less than five years, of each such coverage in the same detail as required for surplus lines insurance. The record must be kept available in the state for examination by the Director of Insurance.

5. Every insurance contract procured and delivered as a surplus lines coverage must have stamped upon it, in red ink with at least ten (10) point bold print, and bear the name of the surplus lines broker who procured it, the following:

THIS SURPLUS LINES CONTRACT IS ISSUED PURSUANT TO THE IDAHO INSURANCE LAWS BY AN INSURER NOT LICENSED BY THE IDAHO DEPARTMENT OF INSURANCE. THERE IS NO COVERAGE PROVIDED FOR SURPLUS LINE EITHER THE IDAHO INSURANCE GUARANTY ASSOCIATION OR BY THE IDAHO LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION.

(Name of Broker & Lic #).

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Idaho	§41-1229	1.50% (+ stamping fee of 0.25%) (annually)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Idaho	§41-1233	1.5% (within 30 days after insurance procured, continued or renewed)
	§41-1229	

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Idaho	No	----	<p>§41-1213(5)(a) and (b); Bulletin 11-08 (November 28, 2011)</p> <p>Same as NRRA</p> <p>“Commercial insurance” defined as “property and casualty insurance pertaining to a business, profession, occupation, nonprofit organization or public entity.” §41-1213(5)(c).</p> <p>Subject to 1.5% tax for policies new and renewal policies with an effective date on or after July 1, 2011 (within 30 days after insurance procured, continued or renewed).</p> <p>§41-1233(1) and (3); 41-1229(1).</p>



2015 Excess and Surplus Lines Laws: Illinois

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

ILLINOIS

General Information:

1. Illinois **does not maintain** a list of eligible surplus lines insurers.
2. Illinois **does** have a Surplus Lines Association (see Other Comments section #4).
3. Illinois **does not** have an Export List.
4. Illinois **does** have an industrial insured exemption (see Appendix C) but also recognizes the exempt commercial purchaser exemption under NRRRA.
5. **Surplus lines tax:** 3.5%, payable by broker and may be passed onto the insured, plus stamping fee of 0.2% and 1% fire marshal tax on property premium.
6. Illinois **has not** affiliated with any existing compact.

Eligibility and Filing Requirements (Foreign Insurers only):

Licensed surplus line producers may procure surplus line insurance from an unauthorized insurer domiciled in the United States only if the insurer:

- (i) is permitted in its domiciliary jurisdiction to write the type of insurance involved; and
- (ii) has, based upon information available to the surplus line producer, a policyholders surplus of not less than \$15,000,000 determined in accordance with the laws of its domiciliary jurisdiction; and
- (iii) has standards of solvency and management that are adequate for the protection of policyholders.

Where an unauthorized insurer does not meet the standards set forth in (ii) and (iii) above, a surplus line producer may, if necessary, procure insurance from that insurer only if prior written warning of such fact or condition is given to the insured by the insurance producer or surplus line producer.

Eligibility and Filing Requirements (Alien Insurers only):

Licensed surplus line producers may procure surplus line insurance from an unauthorized insurer domiciled outside of the United States only if the insurer meets the standards for unauthorized insurers domiciled in the United States in paragraph (b) of this subsection (1.5) or is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Insurance of property and operations of railroads or aircraft engaged in interstate or foreign commerce.
2. Insurance of vessels, crafts or hulls, cargoes, marine builders' risks, marine protection and indemnity, or other risks including strikes and war risks insured under ocean or wet marine forms of policies.

Other Comments or Requirements:

1. The onus is on the surplus lines producing broker to ascertain that standards of solvency and management are adequate and that the company has a minimum \$15,000,000 in surplus.
2. Insurance may be placed with an insurer not meeting these standards if the surplus lines producing broker gives written notice to the insured to that effect.

3. The Director of Insurance can declare a company ineligible.
4. Contact information for the Surplus Line Association of Illinois is as follows:

David Ocasek, Chief Executive Officer
 Surplus Line Association of Illinois
 100 South Wacker Drive, Suite 350
 Chicago, Illinois 60606-4020
 Phone: (312) 263-1993
 Fax: (312) 263-1996
 Email: docasek@slai.org
5. When making a diligent effort to first place insurance with licensed insurers, a surplus line producer need not get a declination from any residual market (certain exceptions for personal lines).
6. Pursuant to Section 215 ILCS 5/445(a) of the Illinois Insurance Code, an insurance company that is domiciled and licensed in Illinois and possessing policyholders' surplus of at least \$15 million may, pursuant to a resolution by its Board of Directors, and with the written approval of the Director, be designated as a "domestic surplus lines insurer" (DSLII). A DSLII must abide by the Illinois surplus lines laws and may only insure in Illinois risks which are procured from a surplus lines producer pursuant to Section 445 of the Illinois Insurance Code.
7. Surplus lines insurance contracts from unauthorized insurers, other than domestic surplus line insurers, shall have stamped or imprinted on the first page thereof in not less than 12-pt. bold face type the following legend:

Notice to Policyholder: This contract is issued, pursuant to Section 445 of the Illinois Insurance Code, by a company not authorized and licensed to transact business in Illinois and as such is not covered by the Illinois Insurance Guaranty Fund.

Insurance contracts delivered under this Section from domestic surplus line insurers as defined in Section 445a shall have stamped or imprinted on the first page thereof in not less than 12-pt. bold face type the following legend:

Notice to Policyholder: This contract is issued by a domestic surplus line insurer, as defined in Section 445a of the Illinois Insurance Code, pursuant to Section 445, and as such is not covered by the Illinois Insurance Guaranty Fund.

8. For further information, contact Illinois Division of Insurance website at www.idfpr.com/doi/default2.asp.
9. The Illinois Legislature enacted legislation in 2014 which revises the definition of industrial insured by statutorily precluding assistance from an insurance intermediary producer. Illinois currently is one of the few states that does not tax direct placement by industrial insureds but will implement such a tax as part of this legislation.
10. The Surplus Line Association of Illinois issued General Bulletin #40 in 2014 stating proposals, endorsements, and other documents which are incidental to the insurance and do not affect the premium charged are exempted from filing and countersignature laws. The Bulletin also states that brokers do not need to file zero premium endorsements. Brokers will still be required to file zero premium semi-annual tax statements in Illinois.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Illinois	5/445	3.5% (+ 0.2% stamping office fee) (1% fire marshal tax) (semi-annually)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Illinois	----	----

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Illinois	<p>“Industrial insured” means an insured that:</p> <p>I. Procures the insurance of any risk or risks of the kinds specified in Classes 2 and 3 of Section 4 of this Code by use of the services of a full-time employee who is a qualified risk manager or the services of a regularly and continuously retained consultant who is a qualified risk manager;</p> <p>II. Procures the insurance directly from an unauthorized insurer without the services of an intermediary insurance producer; and</p> <p>III. Is an exempt commercial purchaser whose home state is Illinois.</p> <p>Further, section 445 of the Illinois Code defines exempt commercial purchaser as follows:</p> <p>“Exempt commercial purchaser” means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:</p> <p>A. The person employs or retains a qualified risk manager to negotiate insurance coverage.</p> <p>B. The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months.</p>	5/121-2.08 5/445 (1)	<p>§ 215 ILCS 5/143 (3); Company Bulletin 2015-09(June 18, 2015)</p> <p>Same as NRRA</p>

C. The person meets at least one of the following criteria:

(I) The person possesses a net worth in excess of \$20,000,000, as such amount is adjusted pursuant to the provision in this definition concerning percentage change.

(II) The person generates annual revenues in excess of \$50,000,000, as such amount is adjusted pursuant to the provision in this definition concerning percentage change.

(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 \$30,000,000, as such amount is adjusted pursuant to the provision in this definition concerning percentage change.

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

Effective on January 1, 2015 and each fifth January 1 occurring thereafter, the amounts in sub items (I), (II), and (IV) of item (c) of this definition shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for all Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

From Appendix D: Surplus Lines Legislative Update 2014

ILLINOIS

Senate Bill 3324 revises the definition of industrial insured by statutorily precluding assistance from an insurance intermediary producer. Illinois currently is one of the few states that does not tax direct placement by industrial insureds but will implement such a tax as part of this bill. The bill also allows an alien insurer not on the NAIC's Quarterly Listing to provide coverage in Illinois as long as it meets the standards for domestic unauthorized insurers. The bill also states surplus lines business records should be retained for seven years after the effective date of the policy. **This bill was enacted on June 19, 2014.**

The Surplus Line Association of Illinois issued **General Bulletin #40** stating proposals, endorsements, and other documents which are incidental to the insurance and do not affect the premium charged are exempted from filing and countersignature laws. The Bulletin also states that brokers do not need to file zero premium endorsements. Brokers will still be required to file zero premium semi-annual tax statements in Illinois.



2015 Excess and Surplus Lines Laws: Indiana

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

INDIANA

General Information:

1. Indiana **maintains** a list of eligible surplus lines insurers (foreign only) (see Other Comments section #1).
2. Indiana **does not** have a Surplus Lines Association.
3. Indiana **does not** have an Export list.
4. Indiana **does** have an industrial insured exemption (see Appendix C) which will remain in effect. As of 7/21/2011, the NRRRA commercial purchaser exemption also became effective.
5. **Surplus lines tax:** 2.5%, payable by broker.
6. Indiana has adopted **SLIMPACT** (SB 578); however, until **SLIMPACT** is operational, Indiana is still collecting 100% of surplus lines premium tax on multistate risks.

Eligibility and Filing Requirements (All Insurers):

Indiana does not impose formal eligibility requirements other than a sponsoring broker requirement for foreign surplus lines insurers as noted below. Such requirements could come into effect eventually, however, through SLIMPACT. The Compact Commission is charged with promulgating uniform rules for compacting states regarding foreign insurer eligibility requirements as authorized by the NRRRA. IC 27-18-2-2.

Eligibility and Filing Requirements (Alien Insurers Only):

NAIC Listing: If alien insurer appears on NAIC Quarterly List, it is approved to do business in Indiana.

Eligibility and Filing Requirements (Foreign Insurers Only):

Sponsoring Broker: A licensed surplus lines producer must request by letter or by email that a foreign (U.S.) surplus lines insurer be added to the state's eligibility list.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Transactions in the state relative to a policy issued or to be issued outside the state, involving insurance on vessels, crafts, hulls or cargoes, marine builder's risks, marine protection and indemnity or other risks, including strikes and war risks commonly insured under ocean or wet marine forms of policy.
2. Industrial Insurance (see Other Comments section #3).

Other Comments or Requirements:

1. Indiana eligibility list available at <http://www.in.gov/cgi-bin/idoi/ssDisplay-2.pl?file=SurplusLines&letter=a>.

Above list applies to foreign surplus lines only; alien surplus lines companies are automatically eligible for surplus lines in this state if they appear on the NAIC Quarterly List of Alien Insurers.

2. Insurance Commissioner may order surplus lines broker to cancel unauthorized insurer's policies if he/she believes financial condition of such insurer does not warrant continuation of the risk.
3. Commercial insureds which purchase insurance under the "industrial insured" exception to the state's unauthorized insurers statute must notify the

Department of such transactions and, among other things, document that the purchased coverage was not available in the admitted market.

4. Effective July 1, 2007, resident surplus lines producers are no longer required to hold a tax guarantee bond in the amount of \$20,000. The surplus lines license was extended from a one year license to a two year license. The surplus lines fees increased from \$20 to \$80 for a resident surplus lines producer/agency and \$120 for a non-resident surplus lines producer/agency.
5. Effective September 9, 2011, the IN DOI imposes retaliatory fees for non-resident surplus lines producers of IL.
6. Effective May 1, 2012, the IN DOI converted to birth month renewal. Business entity license will continue to renew the month initially licensed. Also, invoices for renewals will no longer be printed and mailed. If producer wishes to receive notice, he must insure his email address is on file with the IN DOI.
7. Effective September 13, 2012, the IN DOI imposed retaliatory fees for non-resident surplus line producers of CA, CI, MA and NJ.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Indiana	§27-1-15.8-4	2.5% (semi-annually)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Indiana	----	----

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Indiana	<p>1) Insurance procured through full-time insurance manager or buyer, or regularly retained and continuously qualified insurance consultant;</p> <p>2) Minimum \$25,000 aggregate annual premiums for insurance on all risks;</p> <p>3) Minimum 25 full-time employees; and</p> <p>4) Remits a 2.5% tax on all gross premiums by February 1 along with an affidavit specifying all transactions undertaken in the previous year.</p>	§27-4-5-2(a)(8)	Not codified.



2015 Excess and Surplus Lines Laws: Iowa

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

IOWA

General Information:

1. Iowa **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Iowa **does not** have a Surplus Lines Association.
3. Iowa **does not** have an Export list.
4. Iowa **does not** have an industrial insured exemption but recognizes the NRRRA exempt commercial purchaser exemption as of 7/21/2011, although it is not yet codified.
5. **Surplus lines tax:** 1%, payable by soliciting agent.
6. Iowa has not affiliated with any existing compact. On a multi-state risk when Iowa is not the home state, Iowa will not collect any premium tax. On a multi-state risk where Iowa is the home state, Iowa will collect 100% of the premium tax of 1%.

Eligibility and Filing Requirements (All Insurers):

1. **Annual Statement/Report:** in U.S. dollars.
2. **List of Agents used in State:** (preferred).
3. **Service of process** information.

Eligibility and Filing Requirements (Alien Insurers Only):

1. **Trust Fund:** follows NAIC requirements (see Appendix E).
2. **Capital and Surplus:** follows NAIC requirements (see Appendix E).
3. The State's statutory eligibility requirements are not applicable to alien insurers listed with the NAIC.

Eligibility and Filing Requirements (Foreign Insurers Only):

1. **NAIC UCAA Expansion Application**, available through the Department's website, www.iid.state.ia.us, or through the NAIC website, www.naic.org/industry.
2. Remittance of the greater of a \$100 filing fee or a retaliatory fee, and a \$500 examination fee for all new applicants.
3. Maintain the greater of either minimum capital and surplus of \$15,000,000 or risk-based capital pursuant to Iowa Code Chapter 521E (see Other Comments Section #2).
4. For renewal: \$100 renewal fee, quarterly signed jurat, and submission of other documents and materials listed on the Department's website, www.iid.state.ia.us.

Types of Insurance Exempted from Surplus Lines Regulation:

Insurance on vessels, craft or hulls, cargoes, marine builder's risks, marine protection and indemnity or other risks including strikes and war risks commonly insured under ocean marine or wet marine forms of policies.

Other Comments or Requirements:

1. Iowa eligibility list available at www.iid.state.ia.us/company_search/form. (Check Surplus Lines Companies and Click Submit).
2. A producer who places coverage with a qualified surplus lines carrier must deliver to the insured, within 30 days of the date the policy is issued, a notice that states the following:

This policy is issued, pursuant to Iowa Code section 515.120, by a nonadmitted company in Iowa and as such is not covered by the Iowa Insurance Guaranty Association.

A producer may comply with this rule by typing or stamping a verbatim copy of this language in a clear and conspicuous place on the policy.

3. Effective January 1, 2007, the Iowa Insurance Department adopted new filing procedures. Paper affidavits are no longer required. Instead, all surplus lines tax information is to be submitted electronically.

An invoice or bill will not be sent for surplus lines, purchasing group or risk retention group premium taxes. When all electronic entries have been made for the preceding year, login and under "Select a Task" select Tax and Penalty Due," then select "Print Report" and "Print Receipt for Payment of Taxes". Send the following three items to the Iowa Insurance Division to the address on the Receipt for Payment of Taxes. **These three items are only accepted between January 1 and March 1 of the year following when the policies were filed. Remittance of premium taxes due must be received by the Insurance Division no later than March 1 to avoid any penalties.**

- A copy of the Annual Tax and Penalty Due Report (select "Print Report").
- The Receipt for Payment of Taxes.
- A check made payable to the Iowa Insurance Division for payment of the premium tax.

For more surplus lines information, go to this link: www.iid.state.ia.us/slapp.

4. In 2009, Iowa adopted ADC 191-21 1-9 implementing electronic filing for surplus lines brokers and eliminating the "zero" reports.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Iowa	§507A.9 §432.1(4)(a)	1.00% (annually)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Iowa	§507A.9 §432.1 (4)(a) - (e)	1%

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Iowa	No	---	Not codified.



2015 Excess and Surplus Lines Laws: Kansas

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

KANSAS

General Information:

1. Kansas **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Kansas **does not** have a Surplus Lines Association.
3. Kansas **does not** have an Export List.
4. Kansas **does** have an industrial insured exemption for captive insurers only (see Appendix C) and also recognizes the NRRRA Exempt Commercial Purchaser exemption unless or until SLIMPACT rules are issued.
5. **Surplus lines tax:** 6%, payable by broker.
6. Kansas has adopted **SLIMPACT** (HB 2076). Pending implementation of **SLIMPACT**, when Kansas is the home state, it receives all premium taxes due on risks located in and outside the state at the appropriate tax rate of the locations of the risks.

Eligibility and Filing Requirements (All Insurers):

None. There is a \$200 fee to be added to the State's eligibility list.

Eligibility and Filing Requirements (Alien Insurers Only):

Must be listed on the IID List.

Eligibility and Filing Requirements (Foreign Insurers Only):

1. **Capital and Surplus:** equal to or greater than \$4,500,000.
2. Authorized to write in its home jurisdiction.

Types of Insurance Exempted from Surplus Lines Regulation:

None.

Other Comments or Requirements:

1. Kansas eligibility list available at www.ksinsurance.org.
2. Non-admitted insurers cannot write primary automobile, medical malpractice for Kansas defined health care providers, e.g., workers' compensation, and any coverages which can be placed in the Kansas Fair Plan.
3. Requirements and license application for non-resident surplus lines brokers may be obtained from the Kansas Insurance Department's website at www.ksinsurance.org/documents/agentagency/excess-and-surplus-lines-application.pdf.
4. Any policy issued under the provisions of Kansas surplus lines law shall have stamped or endorsed in a prominent manner thereon, the following:

This policy is issued by an insurer not authorized to do business in Kansas and, as such, the form, financial condition and rates are not subject to review by the Commissioner of insurance and the insured is not protected by any guaranty fund.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Kansas	§40-246c	6% annually (out of state within 120 days of writing risk)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Kansas	----	----

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Kansas	<ol style="list-style-type: none"> 1) Insurance procured through full-time insurance manager or buyer; 2) Minimum \$50,000 aggregate annual premiums for the kinds of insurance procured; 3) Minimum 25 full-time employees; 4) Principal activity consists of the manufacture of a product or products; and 5) Minimum \$10,000 contributed to the capital or surplus of the industrial insured captive insurance company that insures its risks. 	§40-4301(e)	Not codified.



2015 Excess and Surplus Lines Laws: Kentucky

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

KENTUCKY

General Information:

1. Kentucky **does not maintain** a list of eligible surplus lines insurers.
2. Kentucky **does** have a Surplus Lines Association.
3. Kentucky **does not** have an Export List.
4. Kentucky **does** have an industrial insured exemption (see Appendix C) as well as a statutory exempt commercial purchaser exemption. It also recognizes the ECP definition under NRRRA unless or until SLIMPACT rules are issued.
5. **Surplus lines tax:** 3% plus 1.8% surcharge, payable by broker.

(See Other Comments section #1).
6. Kentucky has adopted **SLIMPACT** (HB 167) Effective: June 8, 2011. Advisory Opinion 2011-24.

Eligibility and Filing Requirements (All Insurers):

1. **Annual Statement/Report:** certified and in U.S. dollars preferred, plus \$100 annual statement fee.
2. **Service of Process** form.
3. Kentucky does not currently have any statutory eligibility requirements for surplus lines insurers. If Kentucky chooses to enact eligibility requirements, the requirements must match those set out in NRRRA or match "nationwide uniform" standards adopted by all of the states. The Compact Commission is charged with promulgating uniform rules for compacting states regarding foreign insurer eligibility requirements as authorized by NRRRA. Art. III(3)

Eligibility and Filing Requirements (Alien Insurers Only):

Kentucky may not prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the U.S. that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

Eligibility and Filing Requirements (Foreign Insurers Only):

Kentucky may not impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a U.S. jurisdiction, except:

- Kentucky may require that the insurer be authorized to write the type of insurance in its domiciliary jurisdiction; and
- Kentucky may require that the insurer have capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:
 - The minimum capital and surplus requirements under the law of Kentucky; or
 - \$15,000,000

The insurance commissioner may waive the minimum capital and surplus requirements above if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Ocean marine and foreign trade insurances.
2. Insurance on vessels, craft of hulls, cargoes, marine builder's risk, marine protection and indemnity or other risks, including strikes and war risks commonly insured under ocean or wet marine forms of policy.
3. Insurance on subjects located in, resident of, or to be performed wholly outside of Kentucky, or on vehicles or aircraft owned and principally garaged outside Kentucky.
4. Insurance on operations or railroads engaged in transportation in interstate commerce and their property used in such operations.
5. Insurance of aircraft owned or operated by manufacturers of aircraft or of aircraft operated in commercial interstate flight or cargo of such aircraft or against liability other than workers' compensation and employers' liability arising out of the ownership, maintenance or use of such aircraft.
6. Industrial Insurance.

Other Comments or Requirements:

1. There is also a Local Government Premium Tax (LGPT) imposed by some municipalities, at varying rates depending on line and location.

Any and all policies [with the exceptions listed in KRS 136.392(5)] written or renewing on or after April 1, 2010, shall use the new surcharge rate of 1.8%.

2. Every insurance contract procured and delivered as a surplus lines coverage must have conspicuously stamped upon the face page, initialed by or bearing the name of the surplus lines broker who procured it, the following:

This insurance has been placed with an insurer not licensed to transact business in the Commonwealth of Kentucky but eligible as a surplus lines insurer. The insurer is not a member of the Kentucky Insurance Guaranty Association. Should the insurer become insolvent, the protection and benefits of the Kentucky Insurance Guaranty Association are not available.

3. The Kentucky Legislature enacted Legislation in 2014 which authorizes associations and member underwriters authorized to transact business in Kentucky to qualify as eligible surplus lines insurers if they meet the minimum capital and surplus standards and, if applicable, are listed on the NAIC's Quarterly Listing of Alien Insurers.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Kentucky	§304.10-180	3% plus 1.8% surcharge, payable by broker (annually)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Kentucky	§304.11-030 §304.11-050(1)	2% (annually)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Kentucky	<i>Industrial Insured</i> 1) Insurance (excluding life and annuity contracts) procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant;	§304.11-020(2)(a) and (c)	§ 304.10.030, § 304.10.040; Advisory Opinion 2011-04 (June 3, 2011) includes an alternate definition of ECP
	2) Minimum \$25,000 aggregate annual premiums for insurance on all risks;	§304.49-010(7)	Same as NRRRA.
	3) Minimum 25 full-time employees; and	806 KAR 11:010, § 1	To the extent that a prospective insured meets either the KY or Federal definition of an exempt commercial purchaser, KY's due diligence requirement is preempted. The definitions of an exempt commercial purchaser under NRRRA and an exempt commercial policyholder under KY law differ slightly. If an insured meets the definition of an exempt commercial purchaser under NRRRA, federal law will govern the multi-state non-admitted insurance transaction covering the exempt commercial policyholder. In this event, the surplus lines broker placing the coverage must comply with the taxation requirements applicable to other multi-state non-admitted insurance transactions.
	4) Qualified as an industrial insured as of July 1, 1999.		
<i>Exempt Commercial Policyholder.</i> Employs the services of an insurance agent or broker, procures commercial insurance with the services of a full-time risk manager, or a licensed insurance consultant, and:			
1) Is a city, county, or urban-county with minimum population of 50,000 persons, or the Commonwealth of Kentucky, or a not-for-profit organization or a public entity with a minimum \$25,000,000 annual budget or \$25,000,000 in assets in the preceding fiscal year; or			
2) Certifies that it meets all four (4) of the following criteria:			
(i) Minimum \$25,000,000 net worth at the time the policy of insurance is issued;			
(ii) Minimum \$50,000,000 net revenue or sales in the preceding fiscal year;			

(iii) Minimum 100 employees per individual company or 200 employees per holding company aggregate at the time the policy of insurance is issued; and

(iv) Minimum \$500,000 in annual aggregate insurance premiums in the preceding fiscal year.

Filing Requirement. All industrial insureds and exempt commercial policyholders must reapply to the Commissioner of Insurance for their respective insured status every three years, on a form the Commissioner of Insurance shall promulgate by administrative regulation.

Any industrial insured that filed an affidavit prior to July 1, 1999 which established it satisfied the then-existing criteria for obtaining that status must reapply for their status by filing with the Commissioner of Insurance an "Industrial Insured Affidavit" (Form II-1 P & C) for his approval, certifying that the requirements of §304.11-020(2)(a) continue to be satisfied.

From Appendix D: Surplus Lines Legislative Update 2014

KENTUCKY

House Bill 375 authorizes associations and member underwriters authorized to transact business in Kentucky to qualify as eligible surplus lines insurers if they meet the minimum capital and surplus standards and, if applicable, are listed on the NAIC's Quarterly Listing of Alien Insurers. **This bill was signed by the Governor and enacted on April 7, 2014.**



2015 Excess and Surplus Lines Laws: Louisiana

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

LOUISIANA

General Information:

1. Louisiana **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Louisiana **has** a Surplus Lines Association for brokers only but does not have a Stamping Office.
3. Louisiana **does not** have an Export List.
4. Louisiana **does** have an industrial insured exemption with respect to workers' compensation insurance only (see Appendix C) and also recognizes the exempt commercial purchaser exemption as of 7/21/2011, although it is not yet codified.
5. **Surplus lines tax:** 5%, payable by producer. Producers are required to separately itemize the tax on the declaration page of the policy, LRS 22:855.
6. Louisiana has adopted **NIMA** (HB 469, Act No. 361), and will be using NIMA's allocation method and clearinghouse for multi-state risks. Louisiana will only collect taxes on the portion of a risk located in Louisiana or in a state that is part of NIMA. Louisiana does not impose a tax on any risk that is outside of Louisiana and outside of a NIMA state.

Eligibility and Filing Requirements (All Insurers):

1. **Examination Fee:** \$1,050 due March 1.
2. **Annual Statement/Report:** due April 15.
3. **Application.**
4. **Interrogatories.**
5. **Premium report.**

Eligibility and Filing Requirements (Alien Insurers Only):

1. **NAIC Reporting Format:** due July 31.
2. **Statement of Total Premiums Written in Louisiana:** due April 15.
3. **Trust Fund:** Not less than the greater of \$5,400,000 or 30% of the company's U.S. surplus liabilities, excluding liabilities from exempt business, not to exceed \$60,000,000 (see Other Comments section #4).
4. **Statement of Assets in Trust.**
5. **Capital and Surplus:** follows NAIC requirements (see Appendix E).
6. **NAIC Listing.**

Eligibility and Filing Requirements (Foreign Insurers Only):

1. **Capital and Surplus:** Equal to or greater than \$15,000,000.
2. Authorized to write in its home jurisdiction.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Insurance on property and operation of railroads or aircrafts engaged in interstate or foreign commerce.
2. Insurance on vessels, crafts, hulls, cargoes, marine builders' risks, marine protection and indemnity, or other risks, including strikes and war risks commonly insured under ocean or wet marine forms of policy (see Other Comments sections #2 and #3).

3. Transactions in Louisiana involving a policy lawfully solicited, written, and delivered out of state, covering subjects of insurance not located, or expressly to be performed in, Louisiana at the time of issue, and which transactions are subsequent to the issuance of the policy.
4. Transactions involving risks located in Louisiana where the policy or contract of insurance for such risk was principally negotiated and delivered outside Louisiana, and was lawfully issued in a state or foreign country in which the foreign or alien insurer was authorized to operate an insurance business, and where such insurer has no contact with Louisiana except in connection with inspections or losses required by virtue of the contract or policy of insurance covering the risk located in Louisiana, including transactions involving the operation of workers' compensation claims offices.
7. The following disclosures are required on the declaration pages of surplus lines policies: 1) the premium, tax, and any fees charged should be separately stated and itemized; and 2) every surplus lines contract in Louisiana must have stamped or printed upon it in red or, if not in red, offset by a black border and signed by the surplus lines broker who procured it, in bold type and in not less than ten-point type, the following:

NOTICE

This insurance policy is delivered as a surplus line coverage under the Insurance Code of the State of Louisiana.

In the event of insolvency of the company issuing this contract, the policyholder or claimant is not covered by the Louisiana Insurance Guaranty Association which guarantees only specific policies issued by an insurance company authorized to do business in Louisiana.

This surplus lines policy has been procured by the following licensed Louisiana surplus lines broker:

Signature of Licensed Louisiana Surplus Lines Broker or Authorized Representative

Printed Name of Licensed Louisiana Surplus Lines Broker

(Note: Louisiana DOI Bulletin No. 09-08 sets forth additional disclosures related to what is and what is not covered under various property policies with a focus on flood coverage. A link to Bulletin No. 09-08 may be found at http://docsfiles.com/pdf_bulletin_no_9_08_all_property_and_casualty_insurers_to_james_j.html).

Other Comments or Requirements:

1. Louisiana eligibility list available at: www.lidi.state.la.us/search_forms/white_list/white_list.aspx.
2. The definition of marine insurance does not involve vessels and watercraft under five tons of gross weight.
3. Coverage for any wet marine risk arising out of the exploration, discovery, development, or production for any mineral, the maintenance, shutting in, or the plugging and abandoning of any oil or natural gas or other marine mine, may only be placed with an insurer appearing on the Louisiana Surplus Lines Eligibility List.
4. Louisiana deems compliance with the IID Plan of Operation Standard form trust requirement to be in compliance with Louisiana Law.
5. The Louisiana Surplus Lines Association webpage is www.LSLA.bizland.com.
6. The Louisiana Legislature enacted legislation in 2013 which authorizes the placement of surplus lines insurance without regard to the availability of coverage from authorized (admitted) insurers. The bill also clarifies that inclusion on the Louisiana list of unauthorized insurers shall be prima facie evidence that an unauthorized insurer meets the financial and eligibility criteria for surplus lines insurance.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Louisiana	§22:439	5% (quarterly)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Louisiana	§22:439	5% (quarterly at the annual rate)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Louisiana	<p>Meets at least one of the following requirements:</p> <p>1) Insurance procured through full-time insurance manager or buyer;</p> <p>2) Minimum \$25,000 aggregate annual premium on all risks; or</p> <p>3) Minimum 25 employees.</p> <p>Tax of 5% (quarterly). §22:439(B).</p>	§23:1161	<p>Not codified.</p> <p>Definition in Bulletin 2011-01 is same as NRRA.</p>



2015 Excess and Surplus Lines Laws: Maine

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

MAINE

General Information:

1. Maine **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Maine **does** not have a Surplus Lines Association; however, there is a New England SLA which Maine brokers may become members of.
3. Maine **does not** have an Export List.
4. Maine **does** have an industrial insured exemption with respect to captive insurers only (see Appendix C) and also recognizes the NRRRA exempt commercial purchaser exemption.
5. **Surplus lines tax:** 3% of difference between gross premiums and return premiums (within 45 days of end of each quarter and annually), payable by broker.
6. Maine has not affiliated with any existing compact. (PL 331 LD 1352). However, Maine has authority to enter into multi-state agreement as per Departmental Bulletin 378, June 17, 2011.

Eligibility and Filing Requirements (Alien Insurers Only):

A surplus lines broker may place insurance with an alien insurer if that insurer is listed on the Quarterly List of Alien Insurers maintained by the NAIC. 24-A MRSA § 2007(5).

Eligibility and Filing Requirements (Foreign Insurers Only):

A surplus lines broker may place insurance with a nonadmitted insurer not domiciled in the U.S. if:

- The insurer is authorized to place that type of insurance in its domiciliary jurisdiction; and

- The insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that is the greater of the minimum capital and surplus requirements under the laws of this state or \$15 million.

The insurance commissioner may waive the minimum capital and surplus requirements for unauthorized foreign insurers if he makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. 24-A MRSA § 2007(4).

Types of Insurance Exempted from Surplus Lines Regulation (See Other Comments Section #3):

1. Wet marine and transportation insurance.
2. Insurance on subjects located, resident, or to be performed wholly outside of Maine, or on vehicles or aircraft owned and principally garaged outside Maine.
3. Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.
4. Insurance of aircraft owned or operated by manufacturers of aircraft or of aircraft operated in commercial interstate flight or cargo of such aircraft or against liability other than workers' compensation and employers' liability arising out of the ownership, maintenance or use of such aircraft.

Other Comments or Requirements:

1. Eligibility list available at www.maine.gov/pfr/insurance/company/slcompanies.html.
2. The most effective way to get approval as a surplus lines insurer in Maine is to provide a unique or “special” program for which there is a “need” in Maine.
3. Exempted coverages (1-4 above) must be placed with an eligible surplus lines insurer; however, surplus lines brokers are not required to perform a diligent search of the admitted market prior to placing the coverage.
4. Per Title 24-A § 2412-A of the Maine Insurance Laws, any contract of insurance issued to a large commercial policyholder pursuant to this section, is also exempt from the diligent search requirement.
5. Every insurance contract procured and delivered as a surplus lines coverage must have stamped upon it, and bearing the name of the producer with surplus lines authority who procured it, the following:

This insurance contract is issued pursuant to the Maine Insurance Laws by an insurer neither licensed by nor under the jurisdiction of the Maine Bureau of Insurance.”

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Maine	Title 24-A §2016	3% of difference between gross premiums and return premiums (within 45 days of end of each quarter and annually)
	Title 36 §2513	

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Maine	Title 24-A	3% payable by insured
	Title 36 § 2531(2)	

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Maine	1) Insurance procured through full-time insurance manager or buyer;	§6701(6)	§ 2003(6); Bulletin 378 (June 17, 2011)
	2) Minimum \$25,000 aggregate annual premium for insurance on all risks; and		
	3) Minimum 25 full-time employees.		
	3% (quarterly). Title 36, A §2531(2) and (3). §2113(3) was repealed eff. July 21, 2011.		Same as NRRA.



2015 Excess and Surplus Lines Laws: Maryland

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

MARYLAND

General Information:

1. Maryland **does not** maintain a list of eligible surplus lines insurers.
2. Maryland **does** have a Surplus Lines Association (see Other Comments Section #3).
3. Maryland **does** have an Export List (see Md. Regulations §31.03. 06.10).
4. Maryland **does** have an industrial insured exemption (see Appendix C) and also recognizes the NRRRA exempt commercial purchaser exemption.
5. **Surplus lines tax:** 3%, payable by broker. Premium includes a membership fee, survey fee, inspection fee, service fee, or other similar fee in consideration for an insurance contract.
6. Maryland has not affiliated with any existing compact (HB 959).

Eligibility and Filing Requirements (Alien Insurers Only):

With the exception of unsafe financial conditions as per MD, Code Ann. Ins. §3-319, if company is on the **NAIC List** then nothing need be filed as eligibility is automatic.

Eligibility and Filing Requirements (Foreign Insurers Only):

Surplus lines brokers may not place coverage with a nonadmitted insurer domiciled outside the U.S. unless, at the time of placement, the nonadmitted insurer:

- Is authorized to write such insurance in its domiciliary jurisdiction; and

- Possesses capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of the domiciliary jurisdiction, or \$15 million. § 3-318(a) — (b)

The commissioner may waive the minimum capital and surplus requirement for a nonadmitted insurer if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The director may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. §318(b)(1)-(3).

Types of Insurance Exempted from Surplus Lines Regulation:

1. Wet marine and transportation insurance except: (i) any pleasure craft that is under 60 feet in length and is owned and used for pleasure and not for business, hire, or other commercial use; (ii) fishing vessels under 50 gross tons weight that are not part of a fleet of 3 or more vessels; and (iii) charter or head boats under 50 gross tons and that are not part of a fleet of 3 or more vessels.
2. Insurance on subjects located, resident, or to be performed wholly outside of Maryland or on vehicles or aircraft owned and principally garaged outside Maryland.
3. Insurance on property or operation of railroads engaged in interstate commerce.

4. Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of the aircraft, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of the aircraft.
5. Transactions subsequent to issuance of or relative to a policy covering only subjects of insurance not resident, located, or expressly to be performed in Maryland as of time of issuance covering property in course of transportation by land, air, or water to, from, or through Maryland and including any preparation or storage incidental thereto, and lawfully solicited, written or delivered outside Maryland.
6. Industrial Life Insurance.

Other Comments or Requirements:

1. When a policy is procured through a surplus lines broker which is licensed in the state and payment is not made directly to the surplus lines broker or insurer, a copy of any applicable premium finance agreement or other notice of premium finance agreement must be sent to the surplus lines broker.
2. A surplus lines broker is required to return any gross unearned commissions to the insurer within a reasonable time but not longer than 45 days after a written request by the insurer.
3. Contact information for Maryland Excess & Specialty Lines Brokers Association:
David Riffert, Treasurer
Phone: (301) 439-4700.
4. The same requirements apply to non-resident brokers as resident brokers. Licenses are processed by the Maryland Insurance Administration.
5. Maryland surplus lines brokers are permitted to recover the cost of inspection for the placement of surplus lines insurance if the brokers do not have a financial interest in and do not receive compensation from the person that performs the inspection. Brokers are required to make clear and conspicuous written disclosure of any financial interest in the person performing such an inspection.
6. Maryland prohibits the procurement of surplus lines insurance for coverage of condominium associations.
7. Reports, affidavits and returns that are required to be filed in regard to surplus lines insurance are deemed to be in compliance with the state's filing requirement if the information is transmitted electronically on or before the filing date in a manner approved by the Insurance Commissioner.
8. An affidavit must be filed with the Maryland Insurance Commissioner on or before the 45th day after the last day of the calendar quarter in which the surplus lines insurance was placed.
9. Each insurance contract or confirmation procured must be:
 - (a) endorsed or stamped conspicuously in boldface type on the first page of the insurance contract or confirmation as follows:

"This insurance is issued by a nonadmitted insurer not under the jurisdiction of the Maryland Insurance Commissioner"; and
 - (b) accompanied by a written disclosure, as prescribed by the commissioner of insurance, that:
 - is written in clear, plain English; and
 - explains that the insurer does not possess a certificate of authority from the commissioner of insurance to engage in the insurance business in Maryland.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Maryland	§3-324, §3-325	3% (quarterly and semi-annually)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Maryland	§4-210 §4-211(b)(1)	3% (annually)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Maryland	1) Insurance procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant; 2) Minimum \$100,000 aggregate annual premiums for insurance on all risks; or 3) Minimum 25 full-time employees.	§4-201(a)	§3-301(d); Bulletin 11-26 (September 1, 2011) Same as NRRA. 3% (semi-annually). §4-210; 4-211(b)(1).



2015 Excess and Surplus Lines Laws: Massachusetts

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

MASSACHUSETTS

General Information:

1. Massachusetts **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Massachusetts **does** have a Surplus Lines Association (see Other Comments section #2).
3. Massachusetts **does not** have an Export List.
4. Massachusetts recognizes a diligent search exemption for commercial policyholders. §175.168(b)(iii) - (iv). However, the exemption does not match the NRRRA approach to exempt commercial purchasers. Therefore, both the Massachusetts exemption and the NRRRA exemption are in effect as of 7/21/2011.
5. **Surplus lines tax:** 4%, payable by broker.
6. Massachusetts has not affiliated with any existing compact and has taken no legislative action to comply with NRRRA. Until such time as the Commissioner enters into a cooperative agreement, reciprocal agreement or compact, Massachusetts shall keep 100% of the surplus lines premium tax for coverage provided to an insured for whom Massachusetts is the Home State.

Eligibility and Filing Requirements (All Insurers):

1. **Annual filing fee:** \$150 (by March 1).
2. **CPA Audited Financial Report:** to be filed 120 days after company's fiscal year end.
3. **IID Financial Format:** by July 31 (alien insurers only).

Eligibility and Filing Requirements (Alien Insurers Only):

Massachusetts cannot prohibit surplus lines producers from placing insurance with alien insurers that appear on the Quarterly Listing of Alien Insurers maintained by the NAIC. § 384.021. Accordingly, Massachusetts may maintain separate requirements for alien insurers (§ 175.168(c)(iii)), but the state cannot prevent placement of insurance with those that appear on the NAIC list.

Eligibility and Filing Requirements (Foreign Insurers Only):

1. Licensed in its domiciliary jurisdiction; and
2. Capital and surplus or its equivalent under the

laws of its domiciliary jurisdiction equal to the greater of the minimum capital and surplus requirements under the laws of the home state or \$15 million.

Under NRRRA, an insurance commissioner may waive the minimum capital and surplus requirement for a nonadmitted insurer if he makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million.

Types of Insurance Exempted from Surplus Lines Regulation:

None (see Other Comments section #3 below with respect to tax exemption for ocean marine coverage).

Other Comments or Requirements:

1. The single link below will bring you to a webpage where you will find, among others, a list of *Massachusetts Eligible Surplus Lines Companies* and a list of *Eligible Alien Unauthorized Insurers* [in Adobe and Excel formats]. Hypertexts to both lists are on the single webpage that can be accessed using this link:

www.mass.gov/ocabr/licensee/license-types/insurance/insurance-companies/massachusetts-licensed-insurance-companies.html.

2. New England Surplus Lines Association
Massachusetts contact:

Julie Sonier

Phone: 1-800-262-7475.

3. Under M.G.L. c. 175, sec. 160, ocean marine coverage may be placed with a non-admitted company by a licensed insurance producer if the company involved is "possessed of net cash assets of at least one million dollars computed on the basis fixed by sections ten to twelve, inclusive, and meets all the requirements of section one hundred and sixty-eight relating to foreign companies not authorized to transact business in the commonwealth." Since M.G.L. c. 175, sec. 160 specifically permits ocean marine insurance to be placed with non-admitted companies by licensed Massachusetts insurance producers without the necessity of obtaining a special insurance broker license, the requirements of M.G.L. c. 175, sec. 168, *including the payment of a surplus lines fee*, would not apply in this instance.
4. M.G.L. §175:168 prohibits accident and health, workers' compensation, compulsory motor vehicle liability and life insurance coverage placements in the surplus lines market.
5. Massachusetts requires surplus lines agents to collect special assessments from insureds on surplus lines premiums and remit the assessment specified by order of the Insurance Commissioner to help fund the Massachusetts Windstorm Catastrophe Fund. These funds are only assessed on surplus lines premiums if so determined by the Massachusetts

Insurance Commissioner if deemed necessary to ensure a stable source of reimbursement to both the FAIR plan and private sector insurers for a portion of their losses from catastrophic windstorm events.

6. Assured must sign affidavit (Form BR-7), which must also be signed by broker, stating that he was informed by his insurance broker that the type and amount of insurance could be obtained from insurer's not admitted in Massachusetts and that:
 - The surplus lines insurer with whom the insurance was placed is not licensed in Massachusetts and is not subject to Massachusetts regulations; and
 - In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Massachusetts	Oh. 175 §168 Oh. 175 §169	4% (annually)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Massachusetts	----	----

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Massachusetts	No.	----	<p>§ 175-168, § 175-224</p> <p>Varies from NRRA.</p> <p>“Large Commercial Policyholder” is defined as an insured that has aggregate property and casualty insurance premiums of \$30,000 excluding workers’ compensation, certifies that it has elected to be treated as a Large Commercial Policyholders and meets 2 of the following criteria: (i) net worth of 10M, (ii) net revenue of sales of \$5M, (iii) more than 25 employees per individual company or more than 50 employees per holding company aggregate; (iv) nonprofit or public entity with an annual budget or assets of \$25M or more, (v) is a municipality with a population of 20,000 or more, or (vi) retains a risk manager who shall be a full-time employee or a person retained by the insured who shall either be (a) a certified insurance counselor, (b) a chartered property and casualty underwriter, (c) an associate in risk management, (d) a certified risk manager or (e) a licensed insurance advisor in property and casualty insurance.</p>



2015 Excess and Surplus Lines Laws: Michigan

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

MICHIGAN

General Information:

1. Michigan **does not** maintain a list of eligible surplus lines insurers. However, eligible surplus lines insurers can be found on its website via an entity search tool (See Other Comments section #1).
2. Michigan **does not** have a Surplus Lines Association or Stamping Office.
3. Michigan **does** have an Export List available at www.michigan.gov/documents/lara/quarterly_surplus_lines_list_4252011_351537_7.
4. Michigan **does** have an industrial insured exemption applicable to captive insurers only (see Appendix C) and also recognizes the NRRRA exempt commercial purchaser exemption as of 7/21/2011.
5. **Surplus lines tax:** 2.0% (plus 0.5% regulatory fee on premiums written in the state).
6. Michigan **has not** affiliated with any existing compact and has taken no legislative action to comply with NRRRA. If Michigan is determined to be the home state of the insured, 100% of the premium tax is to be paid to the State of Michigan even for multi-state policies.

Eligibility and Filing Requirements (Foreign Insurers):

Application, including general information on applicant; listing of lines to be written in Michigan and verification of authority to write these lines in company's state of domicile; certification of capital and surplus requirements of \$15,000,000; and \$500 fee (no annual renewal filings). The application and instructions can be found at http://www.michigan.gov/documents/lara/FIS_2260_361190_7.pdf.

Eligibility and Filing Requirements (Alien Insurers):

Application, including general information on applicant; verification that company has been placed on the Quarterly Listing of Alien Insurers maintained by the NAIC; listing of lines to be written in Michigan; and \$500 fee (no annual renewal filings).

Types of Insurance Exempted from Surplus Lines Regulation:

None.

Other Comments or Requirements:

1. Eligible surplus lines insurers in Michigan can be found via an entity search tool at http://www.dleg.state.mi.us/fis/ind_srch/ins_comp/insurance_company_criteria.asp.
2. Michigan requires licensees, risk retention groups, and purchasing groups to electronically file surplus lines taxes through the NAIC OPTins website at www.optins.org. Michigan surplus lines agent may place coverage with an insurer which is neither authorized nor recognized for surplus lines if it files the appropriate affidavit and attempts to place the insurance with an authorized or recognized insurer first.
3. Marine, inland navigation and transportation insurance constitute transactions of insurance for which a certificate of authority is not required in Michigan. Such transactions must still be written by eligible surplus lines insurers although the Michigan Department of Insurance and Financial Services does not require the surplus lines broker to obtain declinations from admitted carriers.
4. Each policy, cover note, or other instrument evidencing surplus lines insurance which is to be delivered to an insured or a representative of an

insured must have printed, typed, or stamped in red ink upon its face, in not less than 10-point type, the following notice:

This insurance has been placed with an insurer that is not licensed by the state of Michigan. In case of insolvency, payment of claims may not be guaranteed.

This notice must not be covered over or concealed in any manner.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Michigan	§500.1905(3)(d)	2% (+ regulatory fee of 0.5% on premiums written in the state) (semi-annually)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Michigan	§500.1951	2% 0.5% (regulatory fee) (within 30 days)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Michigan	1) Insurance procured through full-time insurance manager or buyer; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees.	§500.4601(n)	Not codified.



2015 Excess and Surplus Lines Laws: Minnesota

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

MINNESOTA

General Information:

1. Minnesota **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Minnesota **does** have a Surplus Lines Association (see Other Comments section #6).
3. Minnesota **does not** have an Export List.
4. Minnesota **does not** have an industrial insured exemption but has adopted the NRRRA exempt commercial purchaser exemption.
5. **Surplus lines tax:** 3%, of gross premiums less return premiums (paid to the Minnesota Revenue Department).
6. **Stamping fee:** .06%, payable to the Minnesota Surplus Lines Association.
7. Minnesota **has not** affiliated with any existing compact (SF 1045).

Eligibility and Filing Requirements (Alien Insurers Only):

1. **NAIC Listing.**
2. **NAIC Non-Admitted Insurers Application** including biographical affidavits and surplus lines business plan.
3. **Trust Certification:** The U.S. Counsel (Representative) shall certify that the trust required to be maintained under Minnesota 60A.206, Subd. 5 is in existence, that it will not expire from the last calendar year-end for at least 5 years and has an unencumbered market value of at least \$1,500,000 (see Other Comments section #4), and shall submit

copy of trust deed. Trustee shall provide a certified statement of market value. (For requalification: due April 1).

4. **NAIC IID Financial Format Reporting Format** (in U.S. dollars) including the appropriate footnotes, interrogatories, schedules, and certification of loss reserves. (For requalification: August 1).
5. **Renewal fee:** \$300.
6. The commissioner may not prohibit a sl broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, an alien insurer that is included on the Quarterly Listing of Alien Insurers maintained by the NAIC. § 60A.206 (Subd. 3)(d).

Eligibility and Filing Requirements (Foreign Insurers Only):

A surplus lines broker may place insurance with a foreign insurer if:

- The insurer is authorized to place that type of insurance in its domiciliary jurisdiction; and
- The insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, equal to the greater of the minimum capital and surplus requirements under the laws of this state or \$15 million. § 60A.206 (Subd. 3)(b).

The insurance commissioner may waive the minimum capital and surplus requirement for unauthorized foreign insurers if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and

reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 60A.206 (Subd. 3)(b).

Types of Insurance Exempted from Surplus Lines Regulation:

None.

Other Comments or Requirements:

1. Minnesota eligibility list available at www.commerce.state.mn.us/LicenseLookupMain.html. No direct link is available to Minnesota's Surplus Lines Eligibility List. Use the link above to connect to the online license look-up tool. Select "Insurance Company" from the "Choose" drop down menu which will redirect you to a different website called "sircon." Select Minnesota in the state drop down menu, then select company for entity type, active company list for inquiry type and surplus lines insurer for company type.
2. Individual licensees are responsible for making sure that surplus lines insurance is placed only with surplus lines insurers that are in stable and unimpaired financial condition.
3. An insurer recognized as an "eligible" surplus lines insurer by the Commissioner is considered to be stable and financially unimpaired.
4. As alien insurers must be included in the NAIC Quarterly Listing, such insurers must maintain NAIC capital and surplus and trust fund requirements, whenever greater than Minnesota Statute.
5. Lloyd's syndicates must be included in the NAIC IID's Listing of Alien Insurers to be considered "eligible."
6. Minnesota surplus lines brokers must register with the Minnesota Surplus Lines Association.
7. Each policy, cover note, or instrument evidencing nonadmitted insurance from an eligible surplus lines insurer which is delivered to an insured or representative of an insured must have printed, typed, or stamped in red ink upon its face in not less than 10-point type, the following notice:

THIS INSURANCE IS ISSUED PURSUANT TO THE MINNESOTA SURPLUS LINES INSURANCE ACT. THE INSURER IS AN ELIGIBLE SURPLUS.

LINES INSURER BUT IS NOT OTHERWISE LICENSED BY THE STATE OF MINNESOTA. IN CASE OF INSOLVENCY, PAYMENT OF CLAIMS IS NOT GUARANTEED.

This notice must not be covered or concealed in any manner.

Minn. Stat. Ann. § 60A. 207

(Note: Minn. Stat. Ann § 60A. 209 requires that the above notice be stamped in red ink on policies that are procured with ineligible surplus lines insurers).

8. The Minnesota Department of Revenue issued a Bulletin to surplus lines brokers in 2014 stating that contract service fees which are received by licensed surplus lines brokers in place of a commission are subject to the surplus lines premium tax and should be included on Form IG260.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Minnesota	§2971.05(7)(a)	3%, less returns and dividends, plus .08% stamping fee (.06% for transactions with an effective date on or after 1/1/2013) (payable by individual licensee bi-annually)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Minnesota	§60A.19(8) §2971.05 (subd. 7) (b)	2% (annually) (except life insurance)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Minnesota	No.	----	§60A.196(e) Same as NRRRA.

From Appendix D: Surplus Lines Legislative Update 2014**MINNESOTA**

The Minnesota Department of Revenue issued a bulletin to surplus lines brokers on January 28, 2014 stating that contract service fees which are received by licensed surplus lines brokers in place of a commission are subject to the surplus lines premium tax and should be included on Form IG260.



2015 Excess and Surplus Lines Laws: Mississippi

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

MISSISSIPPI

General Information:

1. Mississippi **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Mississippi **does** have a Surplus Lines Association (see Other Comments section #3).
3. Mississippi **does not** have an Export List.
4. Mississippi **does not** have an industrial insured exemption but has adopted the NRRRA exempt commercial purchaser exemption.
5. **Surplus lines tax:** 4%, plus 0.25% stamping fee, payable by broker or agent (see Other Comments section #4).
6. Mississippi adopted **NIMA** (HB 785) effective June 13, 2011, but subsequently submitted notice of withdrawal from **NIMA** on April 2012.

Eligibility and Filing Requirements (All Insurers):

1. **Filing or Other Renewal Fee:** \$500 due May 1.
2. **Annual Statement/Report:** certified.
3. **Application:** executed by company's U.S. representative, if alien.

Eligibility and Filing Requirements (Alien Insurers Only):

Alien insurers must have capital and surplus meeting the same requirements as foreign insurers and have a trust fund of the greater of: \$5.4 million or 30% of U.S. surplus lines gross liabilities, excluding aviation, wet marine and transportation liabilities, not to exceed \$60 million. §§ 83-21-17(1)(e)(i)-(ii). An alien insurer must also be listed on the NAIC Quarterly

Listing of Alien Insurers. § 83-21-17(1)(h). Effective July 21, 2011, listing on the NAIC list is sufficient; no additional requirements need be met.

Eligibility and Filing Requirements (Foreign Insurers Only):

A foreign insurer is eligible if the insurer has capital and surplus (or its equivalent under the laws of its domiciliary jurisdiction) equal to the greater of: the capital and surplus required of a company licensed to do business in Mississippi or \$15 million. §§ 83-21-17(1)(a)(i) – (ii). The insurance commissioner may waive these minimum capital and surplus requirements and a nonadmitted insurer may become eligible if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. § 83-21-17(1)(b). The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 83-21-17(1)(6).

Types of Insurance Exempted from Surplus Lines Regulation:

Worker's Compensation insurance.

Other Comments or Requirements:

1. Mississippi eligibility list available at <https://www.mid.ms.gov/licensing-search/company-search.aspx>.

Select "Company List" from the scroll down menu "Choose Company List to Download" then select "Surplus Lines – Alien" or "Surplus Lines – Foreign" from the scroll down menu "Choose License Type."

2. In order to be eligible, a foreign insurance company must not be designated as a regulatory priority company by the NAIC.

3. Contact information for the Mississippi Surplus Lines Association is as follows:

Peggy Dronet, Executive Director
Mississippi Surplus Lines Association
2630 Ridgewood Road, Suite D
Jackson, Mississippi 39216
Phone: (601) 713-1111
Fax: (601) 713-1122
Website: www.msla.org

4. Mississippi requires the surplus lines agent to collect a nonadmitted policy fee for any and all risks on real property and contents in Mississippi. This fee is effective on all nonadmitted real property and contents premiums after January 1, 2008, for policies effective January 1, 2008 and after. The minimum fee is three percent (3%) and is not subject to commissions and premium taxes. The Insurance Commissioner may change the fee from time to time.

5. Mississippi has eliminated the affidavit requirement and instead requires a surplus lines insurance producer to execute a form when any policy of insurance or certificate of insurance is procured under the authority of the producer's license. The form must set forth facts in complete detail as to what was done to place the insurance and showing that the producer, after diligent effort, was unable to procure from a licensed company or companies the full amount of insurance required to protect the property, liability, or risk desired to be insured. This form must be maintained on file with the surplus lines insurance producer and may be subject to review by the Mississippi Commissioner of Insurance.

6. Every insurance contract procured and delivered must have stamped upon it in bold ten-point type, and bear the name of the agent who procured it, the following:

NOTE: This insurance policy is issued pursuant to Mississippi law covering surplus lines insurance. The company issuing the policy is not licensed by the State of Mississippi, but is authorized to do business in Mississippi as a nonadmitted company. The policy is

not protected by the Mississippi Insurance Guaranty Association in the event of the insurer's insolvency.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Mississippi	§83-21-25	4% premium tax plus 3%, wind pool fee (reduced from 5% to 3% eff. 7/1/2012), plus 0.25% stamping fee, payable by broker or agent.

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Mississippi	§83-5-61	4% premium tax and 5% nonadmitted policy fee (for policies issued or renewed on or after 3/11/11; 3% for policies issued against fire, lightning or tornado)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Mississippi	No.	----	§83-21-23(2)(b); Bulletin 2011-1 (April 11, 2011) Same as NRRA

From Appendix D: Surplus Lines Legislative Update 2014**MISSISSIPPI**

The Mississippi Insurance Department regulation, Title 19, Part 1, Chapter 15 was revised, effective January 2, 2014. Rule 15.07(H) notes that alien insurers must be listed on the NAIC Quarterly Listing of Insurers.



2015 Excess and Surplus Lines Laws: Missouri

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

MISSOURI

General Information:

1. Missouri **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Missouri **does** have a Surplus Lines Association (see Other Comments section #3).
3. Missouri **does not** have an export list.
4. Missouri **does** have an industrial insured exemption that will remain effective (see Appendix C). The NRRRA exempt commercial purchaser exemption was incorporated into Missouri law and became effective on 7/7/2011.
5. **Surplus lines tax:** 5% (less return premium, and exclusive of state, federal, and local taxes), payable by broker.
6. Missouri **has not** affiliated with any existing compact (SB 132).

Eligibility and Filing Requirements (All Insurers):

A surplus lines licensee shall not place coverage with a nonadmitted insurer unless the licensee determines that the nonadmitted insurer:

1. Meets the capital and surplus requirements of Missouri or \$15 million (the director may waive the financial requirements if the nonadmitted insurer's capital and surplus is at least \$4.5 million and the director finds the insurer is acceptable);
2. Appears on the most recent list of eligible surplus lines insurers published by the director or appears on the most recent Quarterly Listing of Alien Insurers maintained by the NAIC; and

3. Surplus lines carriers are requested to provide premium report by July 1 (see Other Comments section #6).

Eligibility and Filing Requirements (Alien Insurers Only):

NAIC Listing automatically puts company on eligibility list.

Eligibility and Filing Requirements (Foreign Insurers Only):

1. Licensed in home state.
2. \$15 million in capital and surplus.

Types of Insurance Exempted from Surplus Lines Regulation:

None.

Other Comments or Requirements:

1. Missouri eligibility list available at www.insurance.mo.gov under Agents and Producers section.
2. A letter is required from the regulatory body having authority over the company's operations stating that, according to its records, the company is prompt and equitable in its loss payments to policyholders and payments are in accordance with policy provisions.
3. Contact information for the Surplus Lines Association of Missouri is:

Ann Monaco Warren
 English & Monaco, P.C.
 237 East High Street
 Jefferson City, MO 65101
 Phone: 573-634-2522
 Email: awarren@inglishmonaco.com

4. There is no bond requirement for either resident or non-resident surplus lines licensees.
5. Every evidence of insurance negotiated, placed or procured under the provisions of the Missouri surplus lines law and issued by a Missouri surplus lines licensee shall, on the face of the policy or declaration page of the policy, bear the name of the licensee and the following legend in 10-point type:

This is evidence of insurance procured and developed under the Missouri Surplus Lines Laws. It is NOT covered by the Missouri Insurance Guaranty Association. This insurer is not licensed by the state of Missouri and is not subject to its supervision.

6. The report of Missouri business must include the name and address of the producer, name and address of the insured, policy number, effective date of the coverage and premium amount. This document has no bar code and may be transmitted by email to surpluslines@insurance.mo.gov.
7. The Missouri Department of Insurance in 2006 clarified its view that surplus lines taxes apply to policy fees as well as premium taxes. The change appears in Missouri's Regulation, § 20 CSR 200-6.300 Surplus Lines Insurance Fees and Taxes. The department's explanation of the amendments to sections (1), (2) and (3) of this rule is as follows:

This amendment clarifies that any fee charged in connection with the placement of surplus lines insurance is subject to the surplus lines insurance premium tax, regardless of whether the fee is charged by the surplus lines insurer or the surplus lines licensee. As such the amendment is consistent with the current practice of the department and is intended to halt the avoidance of tax by merely shifting the stated source of fees from the insurer to the licensee.

8. All surplus lines licensees are required to hold an underlying Property and Casualty producer license as a pre-requisite to obtaining and maintaining the surplus lines license. Producer licenses are renewed on a biennial basis on the license anniversary date. The aforementioned surplus lines provisions have no effect upon producer licenses.

9. Appendix One filing, which was required to be filed within 30 days of placement, is now required within 45 days of the end of the quarter in which the placement was made.
10. In 2011 the Missouri legislature enacted Senate Bill 132 (SB 132) which adopts amendments to the insurance code to comply with the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA) relating to surplus lines insurance.

The legislation added the terms "exempt commercial purchaser," "home state," "nonadmitted insurance," and "qualified risk manager" to the definition section of the Missouri Surplus Lines Law. The definitions for such terms are consistent with the NRRRA (15 USC 8206)(Section 384.015).

Under the terms of the act, a surplus lines licensee seeking to place nonadmitted insurance in Missouri for an exempt commercial purchaser shall not be required to satisfy any requirement to make a due diligence search to determine whether the full amount or type of insurance by the exempt commercial purchaser can be obtained from nonadmitted insurers if:

- The surplus lines licensee placing the surplus lines insurance has disclosed to such exempt commercial purchaser that the insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and
- The exempt commercial purchaser has subsequently requested in writing the surplus lines licensee to place such insurance from a nonadmitted insurer (Section 384.021).

11. The Missouri Legislature enacted Legislation allowing for the creation of domestic surplus lines insurers. The Legislation also specifies that a nonadmitted insurer that is domiciled in the state may be deemed a domestic surplus lines insurer if the:
 - Insurer possesses policyholders' surplus of at least \$20 million;
 - Insurer is an approved or eligible surplus lines insurer in at least one jurisdiction other than Missouri;

- Board of directors of the insurer has passed a resolution seeking to be a domestic surplus lines insurer in Missouri; and
- Director of the Department of Insurance, Financial Institutions and Professional Registration has given written approval for the insurer to be a domestic surplus lines insurer.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Missouri	§384.059, §384.061	5% (annually)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Missouri	§384.051(6)	5% (annually)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Missouri	<p>1) Insurance (excluding life, health and annuity contracts) procured through full-time insurance manager or buyer, or an insurance producer whose services are wholly compensated by such insured and not by the insurer;</p> <p>2) Minimum \$100,000 aggregate annual premiums for insurance, excluding workers' compensation premiums; and</p> <p>3) Minimum 25 full-time employees.</p>	§375.786(1)(8)	§384.015(5); Bulletin 11-05 (July 21, 2011) Same as NRRA

From Appendix D: Surplus Lines Legislative Update 2014**MISSOURI**

House Bill 1361 allows for the creation of domestic surplus lines insurers. This bill also specifies that a nonadmitted insurer that is domiciled in the state must be deemed a domestic surplus lines insurer if the:

- Insurer possesses policyholders' surplus of at least \$20 million;
- Insurer is an approved or eligible surplus lines insurer in at least one jurisdiction other than Missouri;
- Board of directors of the insurer has passed a resolution seeking to be a domestic surplus lines insurer in Missouri; and
- Director of the Department of Insurance, Financial Institutions and Professional Registration has given written approval for the insurer to be a domestic surplus lines insurer.

Following its adoption, Missouri becomes the 8th state to allow domestic surplus lines insurers, joining Arkansas, Delaware, Illinois, Oklahoma, New Hampshire, New Jersey and North Dakota. This bill was enacted on June 19, 2014.



2015 Excess and Surplus Lines Laws: Montana

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

MONTANA

General Information:

1. Montana **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Montana **does** have a Surplus Lines Association (see Other Comments section #3).
3. Montana **does** have an Export List (see Other Comments section #4).
4. Montana **does** have an industrial insurance exemption applicable to captive insurers only (see Appendix C). Montana has also adopted the NRRRA exempt commercial purchaser exemption.
5. **Surplus lines tax:** 2.75%, plus 0.25% stamping fee if policy is mailed to Office of the Commissioner of Securities and Insurance with a policy effective date on or after 1/1/2012 (0% stamping fee if policy is filed electronically by agent) and 2.5% additional tax on fire portions of surplus lines placements), payable by agent.
6. Montana **has not** affiliated with any existing compact although the Commissioner may enter into a cooperative or reciprocal agreement with other states, individually or collectively (SB 331).

Eligibility and Filing Requirements (Alien Insurers Only):

1. **NAIC Listing.**
2. **Trust Fund:** \$5,400,000.
3. **Statement of Assets in Trust.**
4. **IID Financial Reporting Format.**

5. Brokers may not place insurance with any alien insurer unless the alien insurer appears on the NAIC's Quarterly List of Alien Insurers. §33-2-307(2).

Eligibility and Filing Requirements (Foreign Insurers Only):

A surplus lines broker may not place coverage with a nonadmitted insurer unless, at the time of placement, the nonadmitted insurer:

- Is authorized to write such insurance in its domiciliary jurisdiction; and
- Possesses capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, that equals the greater of the minimum capital and surplus requirements under the laws of Montana or \$15 million.

The commissioner may waive the minimum capital and surplus requirement for a nonadmitted insurer if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. § 33-2-307(1)(b)(ii). The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 33-2-307(1)(b)(ii).

Types of Insurance Exempted from Surplus Lines Regulation:

1. Wet marine and transportation insurance.
2. Insurance on subjects located, resident, or to be performed wholly outside of Montana or on vehicles or aircraft owned and principally garaged outside Montana.

3. Insurance on property or operation of railroads engaged in interstate commerce.
4. Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of the aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of the aircraft.

Other Comments or Requirements:

1. Montana eligibility list available at www.csimt.gov/insurance/.
2. All surplus lines business must be written through a surplus lines producer that is authorized by the Montana Insurance Department.
3. The Montana DOI took over the operations of the Montana Surplus Lines Stamping office, beginning July 1, 2009. The Montana Surplus Lines Agent's Association continues as a nonprofit organization with the mission to serve surplus lines producers.
4. Montana Export List available at Montana Surplus Lines Association website at www.msllaa.org/id9.html or at the Montana DOI website at <http://SAO.mt.gov/-forms/exams/lists/biannist.pdf>.
5. The diligent search requirement (3 declinations from admitted carriers) does not apply for a surplus lines broker if, by placing the account in the surplus lines market, there is a premium savings that is greater than **both 10% and \$1,500**. This can only be done with proof that the non-admitted carrier has at least a financial rating of "A" or greater.
6. Each insurance contract, cover note, or certificate of insurance procured and delivered as surplus lines insurance in Montana must be filed with the commissioner, or with the surplus lines advisory organization formed pursuant to § 33-2-321 of the Montana Insurance Code, and endorsed as **"issued in an unauthorized insurer under The Surplus Lines Insurance Law, under surplus lines insurance producer's license No."** and **"NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent."** The surplus lines producer must properly fill in and sign the endorsement.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Montana	§33-2-311, §33-2-705(2), §33-2-321, §50-3-109(1)	2.75%, plus 0.25% stamping fee (0% stamping fee if policy is filed electronically) and 2.5% additional tax on fire portions of surplus lines payments (annually).

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Montana	§33-2-705	2.75% (annually)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Montana	1) Insurance procured through full-time insurance manager or buyer; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees.	§33-28-101(17)	§33-2-318 Same as NRRA



2015 Excess and Surplus Lines Laws: Nebraska

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

NEBRASKA

General Information:

1. Nebraska **does not maintain** a list of eligible surplus lines insurers.
2. Nebraska **does not** have a Surplus Lines Association.
3. Nebraska **does not** have an Export List.
4. Nebraska **does not** have an industrial insured exemption (statutory exemption repealed upon enactment of NRRRA) but the NRRRA's Commercial Purchaser Exemption is in effect. §44-5502).
5. **Surplus lines tax:** 3%, payable by broker (see Other Comments section #2).
6. The Nebraska Surplus Lines Insurance Act gives the Insurance Director the authority to participate in the clearinghouse established through NIMA although at this time, Nebraska is not a member of NIMA nor does it anticipate using the clearinghouse services on a trial basis. Currently, Nebraska taxes a multi-state policy at the rates of the other exposure states and keeps 100% of the tax.

Eligibility and Filing Requirements (Alien Insurers Only):

A surplus broker may not place coverage with any alien insurer unless it appears on the NAIC's Quarterly List of Alien Insurers. § 44 5508(2).

Eligibility and Filing Requirements (Foreign Insurers Only):

A surplus lines broker may not place coverage with a nonadmitted foreign insurer unless, at the time of placement, the nonadmitted insurer:

- Is authorized to write such insurance in its domiciliary jurisdiction;

- Has established satisfactory evidence of good repute and financial integrity; and
- Possesses capital and surplus — or its equivalent under the laws of its domiciliary jurisdiction — that equals the greater of the minimum capital and surplus requirements under the laws of Nebraska or \$15 million.

The director may waive the minimum capital and surplus requirement for a nonadmitted insurer if the director makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. §44-5508(1)(c)(ii). The director may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 44-5508(1)(c)(ii).

Types of Insurance Exempted from Surplus Lines Regulation:

1. Transactions in the state, relative to policies issued or to be issued outside the state, involving insurance on vessels, crafts or hulls, cargoes, marine builders' risks, marine protection and indemnity or other risks, including strikes and war risks commonly insured under ocean or wet marine forms of policy.
2. Life insurance, variable life, variable annuities and sickness and accident insurance. (Note: disability insurance that has a benefit limit in excess of any benefit limit available from an admitted insurer may be placed through the surplus lines market).

Other Comments or Requirements:

1. Burden is on broker to ascertain existence of trust fund.

2. A surplus lines licensee must stamp or type upon the declaration page of each policy procured and delivered the following information:

- (a) The licensee's name, business address, and surplus lines license number; (b) the name under which the licensee transacts business if different than the licensee's own name; and (c) the language:

This policy is issued by a nonadmitted insurer, and in the event of the insolvency of such insurer, this policy will not be covered by the Nebraska Property and Liability Insurance Guaranty Association.

3. Nebraska permits the procurement of sickness and accident insurance from a nonadmitted insurer under the Surplus Lines Insurance Act. This does not prohibit the procurement of disability insurance that has a benefit limit in excess of any benefit limit available from an admitted insurer.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Nebraska	§44-5506 §81-523	3% (+ additional tax up to 0.75% on fire peril lines) (quarterly)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Nebraska	§44-5515, §44-5506(4)(a)	3% (quarterly) (only with respect to exempt commercial purchasers)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Nebraska	No. Repealed when NRRRA was enacted	----	§44-5502(5)(a) Same as NRRRA.



2015 Excess and Surplus Lines Laws: Nevada

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

NEVADA

General Information:

1. Nevada **does not maintain** a list of eligible surplus lines insurers.
2. Nevada **does** have a Surplus Lines Association (see Other Comments section #2).
3. Nevada **does** have an Export List (see Other Comments section #1).
4. Nevada **does** have an industrial insured exemption (see Appendix C) which will remain in effect. Nevada has also incorporated the NRRRA exempt commercial purchaser exemption.
5. **Surplus lines tax:** 3.5%, payable by broker, plus .4% stamping fee applicable to all premiums. (Penalty of \$500 for "failure to pay taxes" within 45 days after the quarter ends).
6. On June 29, 2012, Nevada submitted a notice of withdrawal from **NIMA**. On July 2, 2012, Nevada released Bulletin 12-005 indicating it will collect 100% of the non-admitted insurance premium tax when Nevada is the home state of the insured. Where Nevada is not the home state of the insured, no premium tax filing in Nevada will be required.

Eligibility and Filing Requirements (All Insurers):

The Nevada Division of Insurance no longer has the authority to maintain a list of eligible insurers and there are no requirements that a foreign or alien insurer must meet other than the objective eligibility criteria specified in the Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA) and reaffirmed in Chapter 685A of NRS, as amended by Senate Bill 289.

Eligibility and Filing Requirements (Alien Insurers Only):

A broker may not place surplus lines insurance with an alien insurer, unless the alien insurer is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC, or, if the alien insurer is not listed on the Quarterly Listing of Alien Insurers, it has and maintains in a bank or trust company which is a member of the US Federal Reserve System a trust fund established pursuant to terms that are reasonably adequate to protect all of its policyholders in the US. Such a trust fund must not have an expiration date which is at any time less than 5 years in the future, on a continuing basis.

Eligibility and Filing Requirements (Foreign Insurers Only):

1. A surplus lines broker may place insurance with a nonadmitted foreign insurer if:
 - The insurer is authorized to place that type of insurance in its domiciliary jurisdiction; and
 - The insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that is the greater of the minimum capital and surplus requirements under the laws of this state or \$15 million.
2. The insurance commissioner may waive the minimum capital and surplus requirements for unauthorized foreign insurers if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. NRS 685A.070(3).

Types of Insurance Exempted from Surplus Lines Regulation:

1. Wet marine and transportation insurance.
2. Insurance on subjects located, resident, or to be performed wholly outside of Nevada or on vehicles or aircraft owned and principally garaged outside Nevada.
3. Insurance of property and operations of railroads engaged in interstate commerce.
4. Insurance of aircraft of common carriers, or cargo of such aircraft, or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of such aircraft.
5. Insurance of automobile bodily injury and property damage liability risks when written by Mexican insurers and covering Mexican, but not U.S. risks.

Other Comments or Requirements:

1. Nevada export list available at www.nsla.org/Export_List/Export_List.aspx. There is also a list of coverages that are ineligible for automatic export at http://nsla.org/Ineligible_For_Export_List/Ineligible_For_Export_List.aspx.
2. Contact information for the Nevada Surplus Lines Association is as follows:

Lynn L. Twaddle, Executive Director
Nevada Surplus Lines Association
6490 S. McCarran Blvd, Building D-2 #39
Reno, Nevada 89509
Phone: (775) 826-7898
Fax: (775) 826-7003
Email: LynnT@nsla.org
3. Each insurance contract procured and delivered as a surplus lines coverage must have conspicuously stamped upon it:

This insurance contract is issued pursuant to the Nevada insurance laws by an insurer neither licensed by nor under the supervision of the Division of Insurance of the Department of Business and Industry of the State of Nevada. If the insurer is found insolvent, a claim under this contract is not covered by the Nevada Insurance Guaranty Association Act.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Nevada	§685A.180(1)	3.5% (+ 0.4% stamping fee applicable to all premiums) (quarterly)
	§680B.027(1)	(Penalty of \$50 for late filing).

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Nevada	§680B.040	3.5% (within 30 days)
	§680B.027(1)	

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Nevada	1) Minimum \$1,000,000 aggregate annual property and casualty premiums (not including workers' compensation or industrial insurance); and	§680A.070(9)	§ 685A.032, § 685A.040
	2) Minimum 250 full-time employees.		



2015 Excess and Surplus Lines Laws: New Hampshire

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

NEW HAMPSHIRE

General Information:

1. New Hampshire **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. New Hampshire **does** have a Surplus Lines Association.
3. New Hampshire **does not** have an Export List.
4. New Hampshire **does** have an industrial insured exemption (see Appendix C) which will remain in effect. The NRRRA commercial purchaser exemption is also effective as per NH DOI Bulletin 8/15/2011.
5. **Surplus lines tax:** 3%, payable by broker.
6. New Hampshire **has not** affiliated with any existing compact but the Commissioner may enter into a cooperative or reciprocal agreement or compact with other states. New Hampshire continues to tax a multi-state policy at the tax rates of the exposure states. (NB 424).

Eligibility and Filing Requirements (All Insurers):

1. **Application form.**
2. Proof that company is on **IID list** (Alien).
3. **Eligibility and Filing Requirements** (Foreign)
4. **\$250 non-refundable fee:** payable to "NH Insurance Department".
5. **Certificate of Compliance** from the Surplus Lines Insurer's state/country of domicile.
6. Page 3 (liabilities, surplus and other funds) of current Annual Statement/Quarterly Statement (Foreign).

7. To maintain status on the list of eligible surplus lines insurers the information above must be submitted annually by March 15th.

NOTE - Foreign non-admitted Surplus Lines insurers that were required to maintain a security deposit in New Hampshire prior to July 21, 2011, may request to have their New Hampshire security deposit released by submitting a written request (no e-mail or faxed request will be accepted) on company letterhead.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Transactions in New Hampshire relative to a policy issued or to be issued outside New Hampshire involving insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.
2. Ocean marine insurance.
3. Industrial insurance.

Other Comments or Requirements:

1. New Hampshire eligibility list available at www.nh.gov/insurance/companies/surpluslines/documents/surpluslist.pdf.
2. Effective May 1, 2010, the New Hampshire Insurance Commissioner transferred the electronic Surplus Lines submissions of forms and payment processing operations to OPTins (Online Premium Tax for Insurance), a product of the National Association of Insurance Commissioners.

3. Every producer must have stamped in a form approved by the commissioner on the face of the binder or policy the following:

The company issuing this policy has not been licensed by the state of New Hampshire and the rates charged have not been approved by the commissioner of insurance. If the company issuing this policy becomes insolvent, the New Hampshire insurance guaranty fund shall not be liable for any claims made against the policy.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
New Hampshire	§405:29	3% (annually)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
New Hampshire	§405-B:6	4% (annually)
	§406-B:17(III)	2% (marine)
	§406-B:17-a	

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
New Hampshire	1) Insurance (excluding life and annuity contracts) procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant;	§406-B:16 VI	Not codified.
	2) Minimum \$15,000 aggregate annual premiums for insurance on all risks; and		
	3) Minimum 25 full-time employees.		
	3% of gross premiums charged. §406-B:16(VI)(a)		Definition in Bulletin of August 15, 2011 is the same as NRRA.



2015 Excess and Surplus Lines Laws: New Jersey

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

NEW JERSEY

General Information:

1. New Jersey **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. New Jersey **does** have a Surplus Lines Association (voluntary participation) but **does not** have a stamping office (see Other Comments section #2).
3. New Jersey **does** have an Export List (see Other Comments section #1 and #6).
4. New Jersey **does** have an industrial insured exemption and has also adopted the NRRRA definition of exempt commercial purchaser.
5. **Surplus lines tax:** 5%, payable by surplus lines producer. For fire premiums written in NJ on or after 7/1/09, 3% of the premium receipts tax covering fire insurance should be paid to the Treasurer of the New Jersey State Firemen's Association, and the remaining 2% of the premium receipts tax to the Commissioner of Banking and Insurance (pursuant to NJ Bulletin No. 09-21).
6. New Jersey **has not** affiliated with any existing compact but Commissioner is authorized to enter into, modify and to terminate the state's participation in one or more compacts (SB 2930) Effective: July 21, 2011.

Eligibility and Filing Requirements (All Insurers):

Pursuant to N.J.A.C.11:19-3, New Jersey requires all eligible surplus lines insurers to maintain and file with the Department Of Banking and Insurance a report listing all policies/direct premiums written for New Jersey insureds. All eligible insurers are requested to submit this information by April 1 using the Surplus Lines Automation Suite/Surplus Lines Information Portal.

Eligibility and Filing Requirements (Alien Insurers Only):

None, alien insurers only need to be on IID List.

Eligibility and Filing Requirements (Foreign Insurers Only):

1. **Letter of Intent.**
2. **Annual Statement.**
3. **Certificate of Compliance** from state of domicile (must be filed annually with the DOI)

Types of Insurance Exempted from Surplus Lines Regulation:

1. Railroad or aviation risks engaged in interstate or international commerce.
2. Insurance of vessels, crafts or hulls, cargoes, marine builders' risks, marine protection and indemnity or other risks including strikes and war risks commonly insured under ocean or wet marine forms or policies.

Other Comments or Requirements:

1. Eligibility and export lists available at <http://www.state.nj.us/dobi/sleo.htm>.
2. New Jersey Surplus Lines Association website is www.njsla.org.
3. Effective 2003, New Jersey eliminated the form approval requirements for surplus lines policies which brings New Jersey in line with all other states in providing surplus lines carriers freedom of form.
4. At the time of quotation, the originating producer shall provide to the applicant a copy of the form incorporated herein by reference as Exhibit A-1 in the Appendix to this chapter and retain a signed copy.

APPENDIX EXHIBIT A-1

Form to be used at the time of quotation:

The undersigned applicant has been advised by the undersigned originating insurance producer and understands that an insurance policy written by a surplus lines insurer is not subject to the filing or approval requirements of the New Jersey Department of Banking and Insurance. Such a policy may contain conditions, limitations, exclusions and different terms than a policy issued by an insurer granted a Certificate of Authority by the New Jersey Department of Banking and Insurance.

Applicant Signature

Applicant's Name (Print or Type)

Date of Applicant's Signature

Producer Signature

Producer Name (Print or Type)

Date of Producer Signature

New Jersey Producer License Reference Number

5. The following statement must appear on all Surplus Lines Policies, Evidence of Coverage and Renewal Policies or be provided or as a standalone notice:

This policy is written by a surplus lines insurer and is not subject to the filing or approval requirements of the New Jersey Department of Banking and Insurance. Such a policy may contain conditions, limitations, exclusions and different terms than a policy issued by an insurer granted a Certificate of Authority by the New Jersey Department of Banking and Insurance. The insurer has been approved by the Department as an eligible surplus lines insurer, but the policy is not covered by the New Jersey Insurance Guaranty Fund, and only a policy of

medical malpractice liability insurance as defined in N.J.S.A. 17:30D-3d or a policy of property insurance covering owner-occupied dwellings of less than four dwelling units are covered by the New Jersey Surplus Lines Guaranty Fund.

6. New Jersey amended its export list in 2009 to add "special risk disability and personal accident coverage" and "livestock gross margin policies" to the list.
7. New Jersey enacted legislation in 2011 to allow a domestic insurer possessing policyholders' surplus of at least \$15 million may, pursuant to a resolution by its board of directors, and upon the written approval of the Commissioner of Banking and Insurance, to be designated as a domestic surplus lines insurer. Under this legislation, the domestic surplus lines insurer is precluded from writing policies of private passenger automobile insurance, worker's compensation, or worker's occupational disease insurance. Insurance written by a domestic surplus lines insurer would also be subject to the 5% surplus lines tax.

This legislation also provides that whenever any insurance risk or any part thereof is placed with a domestic surplus lines insurer, the policy, binder or cover note needs to bear conspicuously on its face in boldface, the following notation: "Notice to Policyholder: This policy is written by a domestic surplus lines insurer, an eligible unauthorized insurer pursuant to Section 2 of P.L.c(C) (pending before the New Jersey Legislature as this bill), and is not subject to the rate or form filing or approval requirements of the New Jersey Department of Banking and Insurance. This policy may contain conditions, limitations, exclusions and different terms than a policy otherwise issued by a New Jersey authorized or admitted insurer. This policy is not covered by the New Jersey Property Liability Guaranty Association. This policy may be covered by the New Jersey Surplus Lines Insurance Guaranty Fund, but only to the extent provided pursuant to Section 2 of P.L. 1984(c.101(C). 17:22-6.71)."

8. The New Jersey Department of Banking and Insurance in 2012 promulgated New Rule N.J.A.C. 11:1-28.4A which conforms the existing rules in New Jersey governing surplus lines allocation, eligibility, and procurement to the NRRRA. The purpose of the new rule is to help avoid any confusion regarding the application of the New Jersey Insurance Department's rules in light of the enactment of the

NRRA. The new rule also sets forth requirements for a domestic property/casualty insurer to be designated a domestic surplus lines insurer pursuant to N.J.S.A. 17:22-6.69b.

9. New Jersey updated its export list in 2014 to include private flood insurance. This was the only addition to the list, and there were no deletions.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
New Jersey	§17:22-6.59	5% (quarterly)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
New Jersey	§17:22-6.64	5% (within 30 days)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
New Jersey	(1) who procures the insurance of a risk by use of the services of a full time employee acting as an insurance manager or buyer;	§17:47B-1	§ 11:1-33.2, § 11:1-33.3
	(2) who has at least 25 full time employees; and		Same as NRRRA.
	(3) whose aggregate annual premiums for insurance on all risks total at least \$25,000.		
	Subject to taxes specific to captives under §17:47B-12.		

From Appendix D: Surplus Lines Legislative Update 2014

NEW JERSEY

The New Jersey Surplus Lines Association (NJSLA) is seeking the elimination of the state Surplus Lines Guaranty Fund. A number of industry interested parties are providing resources to support the NJSLA efforts. New Jersey is the only state to ever have a Surplus Lines Guaranty Fund. The Fund's coverage is limited to holders of two specific types of policies - medical malpractice liability or personal lines property/homeowners insurance policies issued by an eligible surplus lines insurer. The legislature has significantly depleted the Fund in recent years for general State use. The coalition of interested parties believe the Fund is not used for its original purpose, provides a false sense of security to policyholders and endangers the New Jersey surplus lines market and therefore should be eliminated. Representatives from the NJSLA have been meeting with legislators to gain support for this initiative.

On February 24, 2014, the New Jersey Department of Banking and Insurance issued an Order updating its export list to include private flood insurance. This was the only addition to the list, and there were no deletions.



2015 Excess and Surplus Lines Laws: New Mexico

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

NEW MEXICO

General Information:

1. New Mexico **does** maintain a list of eligible surplus lines insurers (foreign insurers only).
2. New Mexico **does** have a Surplus Lines Association.
3. New Mexico **does** have an Export List.
4. New Mexico **does** have an industrial insured exemption which will remain in effect. The NRRRA exempt commercial purchaser exemption is also in effect. (§ 59-14-2(F)).
5. **Surplus lines tax:** 3.003%, payable by broker.
6. New Mexico **has** adopted **SLIMPACT** (SB 250).

Eligibility and Filing Requirements (All Insurers):

Certificate of Compliance from domiciliary regulator due every March 1.

Eligibility and Filing Requirements (Alien Insurers Only):

Alien insurers must be on the NAIC Quarterly Listing of Alien Insurers. § 59A-14-4(C)(3).

Eligibility and Filing Requirements (Foreign Insurers Only):

New Mexico added a specific provision on foreign insurer eligibility to the SLIMPACT Model (§ 59A-14-4(C)): Surplus lines brokers shall not place coverage with a nonadmitted insurer unless, at the time of placement, the nonadmitted insurer:

- Is authorized to write such insurance in its domiciliary jurisdiction;
- Has established satisfactory evidence of good repute and financial integrity; and

- Possesses capital and surplus – or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of New Mexico or \$15 million.

The superintendent may waive the minimum capital and surplus requirement for a nonadmitted insurer if the superintendent makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. § 59A-14-4(C)(1)(b). The superintendent may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 59A-14-4(C)(1)(b).

Types of Insurance Exempted from Surplus Lines Regulation:

1. Wet marine and transportation insurance as defined in Section 59A – 7-5 NMSA 1978.
2. Insurance on subjects located, resident, or to be performed wholly outside of New Mexico or on vehicles or aircraft owned and principally garaged outside New Mexico.
3. Insurance on property or operation of railroads engaged in interstate commerce.
4. Insurance of aircraft of common carriers, cargo of such aircraft, or against liability, other than employer's liability, arising out of the ownership, maintenance or use of such aircraft.
5. Insurance of automobile bodily injury and property damage liability risks when written by Mexican insurers and covering risks in Mexico and not in the U.S.

6. Insurance independently procured.

Other Comments or Requirements:

1. Burden is on broker not to place insurance with financially unsound insurers whose capital and surplus is insufficient for the particular risk.
2. Every insurance contract procured and delivered as surplus lines insurance must bear the name, address and signature of the surplus lines broker who procured it and have stamped, printed or otherwise displayed prominently in boldface 10 point or larger type either upon its declarations page or by attachment of an endorsement, the form of which may be promulgated by the superintendent, the following:

This policy provides surplus lines insurance by an insurer not otherwise authorized to transact business in New Mexico. This policy is not subject to supervision, review or approval by the superintendent of insurance. The insurance so provided is not within the protection of any guaranty fund law of New Mexico designed to protect the public in the event of the insurer's insolvency.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
New Mexico	§59A-6-2	3.003% (quarterly)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
New Mexico	§59A-6-2 §59A-14-1 §59A-15-2 §59A-15-4	3.003% (within 90 days)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
New Mexico	1) Insurance procured through full-time risk or insurance manager, or regularly and continuously qualified insurance consultant; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees. May be subject to tax under §59A-14-12(C).	§59A-15-2(B)(5)	§59A-14-2(F) Same as NRRRA.



2015 Excess and Surplus Lines Laws: New York

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

NEW YORK

General Information:

1. New York excess lines brokers may only place insurance with those insurers that have made application to and been approved by the Excess Line Association of New York (ELANY) and agree to abide by N.Y. Regulation 41. (Eligibility list available on ELANY website at <http://www.elany.org/es-el-f.aspx> (foreign);
2. New York **does** have an Excess Line Association (see Other Comments section #5).
3. New York **does** have an Export List at www.elany.org (see Other Comments section #11, #13, and #18).
4. New York **does** have an industrial insured exemption applicable to captive insurers only (see Appendix C) and also recognizes the exempt NRRRA commercial purchaser exemption. (§ 2101(x)(2))
5. **Surplus lines tax:** 3.6%, payable by broker to the state, plus 0.2% stamping fee payable to ELANY. (Additional fee of \$25 applies for late/erroneous filing.) As of 7/1/2015, stamping fee reduced to 0.18%.
6. New York **has not** affiliated with any existing compact but has adopted legislation allowing it to keep 100% of surplus line premium tax where New York is the home state (SB 2811).

Eligibility and Filing Requirements (All Insurers):

The New York law did incorporate NRRRA eligibility provisions.

Section 27.13 of New York Regulation 41 requires that prior to placing business with an eligible excess line insurer, when the insured's home state is New York, an

excess line broker must obtain, review and retain at least the following documents [unless ELANY obtains and retains these documents]:

1. Copy of insurer's most recent Annual Statement (foreign insurer).
2. If an alien insurer, evidence that it appears on the most recent NAIC IID list of alien insurers.
3. Copy of insurer's latest available report on examination, if applicable.
4. A certificate of authority from the insurer's home jurisdiction verifying that such insurer is authorized to write the kinds of insurance sought to be placed.

Although ELANY publishes on its website list of unauthorized insurers which meet the minimum requirements of eligibility in New York, it remains the non-delegable duty of the excess line broker to use "due care" in the selection of any such insurer.

(Note: New York has a \$45 million capital and surplus requirement applicable to U.S. excess line insurers; Alien insurers must maintain the minimum capital and surplus requirement by the NAIC.)

Types of Insurance Exempted from Surplus Lines Regulation:

1. Ocean marine insurance, which is limited to vessels engaged in the transportation of goods and merchandise in either foreign or coastwide trades. It does not include yachts, pleasure crafts, fishing vessels and tugs (see Other Comments section #1).
2. Insurance in connection with ocean going vessels against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any

vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

3. Insurance against legal liability arising out of the ownership, operation or maintenance of any motor vehicle or aircraft which is neither principally garaged nor principally used in New York, arising out of any activity carried on wholly outside of New York or arising out of the ownership, operation or maintenance of any property having a permanent situs outside of New York, but in case such property or risk is located in any other state, then exemption applies only if the insurer is authorized to do such business in such state and a licensed insurance broker of such state may lawfully place such insurance.

Other Comments or Requirements:

1. New York Circular Letter No. 28 (1999) clarifies the Department's position that if a risk is placed by an unauthorized insurer involving a class of insurance other than ocean marine insurance, it should only be placed through an excess line broker licensed in New York. Such business must also be written pursuant to the surplus lines laws of the State of New York. Circular Letter No. 28 also states that it is the broker's responsibility to allocate the risk between ocean marine insurance and any other kind of insurance. Part of the risk that is other than ocean marine insurance, when placed with an unauthorized insurer, is subject to the payment of an excess line premium tax for the filing of affidavits and the stamping of the policies by ELANY as well as other applicable regulatory requirements of the Department. Circular Letter No. 22 (2000) opines that ocean marine insurance is "insurance covering damage to ships or vessels and the goods they carry while on the ocean or inland waters." While Circular Letter No. 22 does not so state, the Department has confirmed that pure marine protection and indemnity insurance is treated in the same manner as ocean marine insurance.
2. All filings must be submitted to both New York Department of Financial Services (NYDFS) and ELANY unless otherwise stated.

Electronic filing of broker affidavits as well as the electronic submissions for recording and stamping of declaration pages, cover notes, binders, endorsements, notices of excess line placement and other excess line insurance documents are permitted provided these methods of submitting

for recording and stamping purposes are first approved by the Superintendent.

3. New York no longer requires the completion or filing of insured's affidavit (Part B) in connection with excess line placements. Instead of the insured's affidavit requirement, the law substitutes a requirement that such insureds be given notice containing certain information set forth in Section 27.5(e) of Regulation 41.
4. New York permits binding authority for licensed New York excess line brokers upon written authorization of non-admitted insurers. This binding authority power was extended by chapter amendment to include both in-state and out-of-state risks.
5. Contact information for ELANY is as follows:

Daniel F. Maher
 Excess Line Association of New York
 One Exchange Plaza
 55 Broadway, 29th Floor
 New York, New York 10038
 Telephone: (646) 292-5500
 Fax: (646) 292-5505
 Email: dmaher@elany.org

6. The following language must be stamped on every excess lines insurance policy, memorandum, certificate or other document evidencing insurance coverage delivered to a New York insured in not less than ten point bold type:

THE INSURER(S) NAMED HEREIN IS (ARE) NOT LICENSED BY THE STATE OF NEW YORK, NOT SUBJECT TO ITS SUPERVISION, AND IN THE EVENT OF THE INSOLVENCY OF THE INSURER(S), NOT PROTECTED BY THE NEW YORK STATE SECURITY FUNDS. THE POLICY MAY NOT BE SUBJECT TO ALL OF THE REGULATIONS OF THE DEPARTMENT OF FINANCIAL SERVICES PERTAINING TO POLICY FORMS.

7. New York permits excess lines brokers to place malpractice insurance for nursing homes and certain other facilities. For these types of risks, three declinations from insurers writing malpractice insurance are required. For doctors, dentists and general hospitals, a declination must be obtained from the resident market, known as the "MMIP" or the "Pool," before placing primary coverage with an excess line insurer.

8. The Office of General Counsel of the NYDFS issued two opinions in 2007 which state that policy fees charged by an excess line insurer are to be considered excess line premium subject to the excess line tax and the ELANY stamping fee.
9. The 10th amendment to Regulation No. 41 was promulgated on December 19, 2007. This amendment changes the maximum deposits required in which Alien insurance companies eligible in New York must put in trust to secure payment of judgments. The amendment is intended to conform New York regulation to new trust fund requirements adopted by the International Insurers Department of the National Association of Insurance Commissioners.
10. New York adopted legislation in 2008 amending Insurance Law Sections 2601 and 3420 and Section 3001 of the Civil Procedure Law and Rules ("CPLR"). Among other things, the Legislation prohibits insurers from denying a claim under policies issued in New York after January 17, 2009 based on late notice unless the insurer can show that it was prejudiced by the untimely notice, and would also allow an underlying plaintiff to bring a declaratory judgment action directly against the tortfeasor's insurer under limited circumstances. The New York Insurance Department also issued a Circular Letter 26 (2008), dated November 18, 2008, to clarify that the Legislation applies to "all liability policies," including renewals, issued or delivered in New York on or after the Legislation's effective date, including those policies issued in the excess/surplus lines market. It therefore appears that that the Legislation's treatment of claim's made policies will apply to claims-made policies which may only be issued in New York by unauthorized insurers through the excess/surplus lines market.
11. The NYDFS in 2009 promulgated the 11th Amendment to Regulation 41 in order to expand the export list effective for placements on or after September 2, 2009. The new coverages added to the export list include: commercial excess and umbrella liability (over \$10,000,000), commercial property (excess of \$50,000,000), contract frustration, employed lawyers liability, construction contractors liability coverage, owner's contractor's protective, prize indemnification, special events and vacant commercial property.
12. On April 18, 2011, the Superintendent of the NYDFS promulgated the **12th Amendment to Regulation 41** (the "Amendment"). Pursuant to the Amendment, excess lines insurers obtaining eligibility in New York on or after January 1, 2011 must maintain surplus to policyholders of at least \$45,000,000, instead of \$15,000,000. Excess lines insurers that obtained eligibility in New York prior to January 1, 2011 will be required to increase the amount of surplus to policyholders from \$15,000,000 to \$45,000,000 incrementally over the next few years. Specifically, excess lines insurers that became eligible in New York prior to January 1, 2011 must maintain surplus to policyholders of at least \$25,000,000 by July 1, 2011, \$35,000,000 by January 1, 2012 and \$45,000,000 by January 1, 2013. Although the Amendment was not officially promulgated until this month, New York has required insurers to maintain surplus to policyholders of at least \$45,000,000 to obtain excess lines eligibility for over a year.

The Amendment also provides for an automatic \$1,000,000 increase to the minimum amount of surplus to policyholders for all eligible excess line beginning on January 1, 2016 and every three years thereafter.
13. On April 21, 2011, the NYDFS issued a proposed draft **13th Amendment to Regulation 41** for public comment. The proposed Amendment expands the types of risks to be added to the so-called "export list." Some of the proposed risks to be included on the New York export list include Builders Risk insurance, Elevator Service and Maintenance Contractors – Liability and Property Damage, Excess Professional/Errors & Omissions Liability – All Classes, Excess Salary Protection (Disability) Insurance, Large Law Firm Lawyers' Professional Liability Insurance and Primary and/or Excess "Liability" Insurance for vacant or unoccupied buildings.
14. On July 22, 2011, the NYDFS issued the **14th Amendment to Regulation 41 and Circular Letter No 9 (2011)** which addresses the allocation issue when a risk has exposures both in the U.S. and outside of the U.S. The state has now indicated that only that portion in the U.S. shall be taxed by NY. The amendment also changed the trust fund requirements. The trust fund was previously a condition of eligibility but it is now a substitute for pre-answer collateral. The NRR

prohibited eligibility requirements imposed by a state outside of capital and surplus requirements and the requirement that the insurer be in good standing in its home state.

15. The New York State Department of Taxation and Finance issued a technical memorandum regarding changes to NY Tax Law Article 33-A. These changes were necessitated in order to conform to the requirements of the Nonadmitted and Reinsurance Reform Act (NRRRA) for independently procured insurance. The memorandum advises that for taxable insurance contracts independently procured from an unauthorized insurer with an effective date on or before July 21, 2011, tax payers should use form **CT-33-D(4/11)** and for taxable insurance contracts independently procured from an unauthorized insurer with an effective date **on or after** July 21, 2011, taxpayers should use form, **CT-33-D(7/11)**. The fundamental difference in these forms is that transactions effective on or before July 20, 2011 continue to be tax allocated while transactions effective on or after July 21, 2011 are taxed on 100% of the gross written premium.
16. On July 22, 2011, the NYDFS issued Circular Letter No. 9(2011) regarding "home state" determination for purchasing group (PG) members.

The Circular Letter states that excess line brokers must file affidavits and related individual certificate of insurance for each individual New York "home stated" member of the PG and pay premium taxes only to New York for New York "home stated" PG members. However, only one set of declinations and one master affidavit is required for each purchasing group.
17. On March 12, 2012 the NYDFS issued Supplement No. 1 to Insurance Circular Letter No. 9. The purpose of this supplement to Circular Letter No. 9 is to provide guidance and clarification to all insurers eligible to write excess line insurance in New York and to all excess line brokers regarding the termination of trusts established pursuant to New York Regulation 41 prior to the July 21, 2011 effective date of NRRRA. Under Supplement No. 1, if an unauthorized foreign or alien insurer wishes to terminate a trust that has been established pursuant to New York Regulation 41 prior to July 21, 2011, then the insurer must do so in conformance with the trust fund agreement.

18. The NY DFS expanded the export list in 2013 effective for placements made on or after April 10, 2013.

The "export list" sets forth types of insurance coverages that the New York Superintendent of the Department of Financial Services has determined are generally not available from licensed insurers. Three declinations are not required for export list coverages. Risks on the "export list" only exempt.

The following new coverages added to the export list will require no declinations:

Asbestos, Fungi and Water Damage Remediation and Removal Liability and Property Damage.

Builders Risk Insurance Coverage for construction projects where the total insured values exceed \$10,000,000.

Elevator Service and Maintenance Contractors Liability and Property Damage.

Excess Professional/Errors & Omissions Liability –All Classes Excess liability coverage where the underlying policy limits and/or self-insured retention is at least \$10,000,000 per occurrence.

Excess Salary Protection (Disability) Insurance as a monoline policy Insurance pursuant to Insurance Law section 1113 (a)(31)(A) against financial loss caused by the cessation of earned income due to disability from sickness, ailment or bodily injury, in an amount up to that portion of an individual's annual earned income, which is in excess of the amount of in-force disability insurance from an authorized insurer, [in amount not to exceed 75% of the individual's annual earned income in total based upon the sum of in-force disability insurance and salary protection insurance when benefits are payable to individual or individual's beneficiary.]

Large Law Firm Lawyers' Professional Liability Insurance (LPL) Professional liability for a law firm that has more than 100 attorneys.

Recreational Guide Services Coverage for outfitters and guides for Camping, Hiking, Rafting, Bungee Jumping, Parachuting, Hunting and Fishing Clubs, Shooting Ranges, Hunting and Fishing and similar recreational activities. Vacant or Unoccupied Buildings Primary and/or Excess "Liability" Insurance for vacant or unoccupied Buildings.

19. The following changes were included in the final adopted version of the 14th Amendment to Regulation 41:

a) Neither ELANY nor excess line brokers will be required to obtain:

- an insurer's prospective three year business plan,
- an executed copy of the insurer's trust agreement and periodic "funds in trust statement" from the trustee, alien insurer IID Standard Financial Statements. (See II, 3 below)

b) Foreign insurers will no longer be required to establish a \$2.5 million trust fund. Such trust funds which currently exist may be terminated in accordance with the terms of the trust agreement.

c) Service of Process/Consent to Jurisdiction.

- §27.16 of Regulation 41 is deleted. This removed from the regulation **but Not From the Insurance Law** requirements regarding consent to service of process and appointing the superintendent as agent for service of process. Eligible insurers should note that New York Insurance Law §1213(c) exempts unauthorized insurers from posting collateral or pre-answer security in litigation on risks placed through excess line brokers when the policy designates the superintendent as the lawful attorney upon whom lawful process may be served.

d) The following obligations are now directed at insurers where previously the excess line broker was responsible to verify the insurers conduct:

- the insurer will be directly required to file an electronic EL-1 report on March 15th each year setting forth each New York excess line transaction bound in the prior calendar year,
- unauthorized insurers will be directly prohibited from selling a) types of coverage which the excess line law bars excess line brokers from selling, b) coverages which are not recognized as legal types of insurance in New York, c) coverages which are prohibited by public policy.

- insurers will be directly required to treat payment of premium to the excess line broker as payment to the insurer.

The following provisions of Regulation 41 remain unchanged:

a) Excess line brokers will continue to be required to obtain the following unless ELANY obtains these documents.

- a copy of a foreign insurer's most recent Annual Statement
- evidence that the insurer is on the current IID Quarterly listing (alien insurers only),
- a copy of the insurer's latest Report on Examination, only if accessible to the excess line broker
- a certificate of authority from the insurer's home jurisdiction verifying the kinds of insurance the insurer is permitted to underwrite.

b) Foreign insurers must maintain at least \$45M of policyholder surplus to be eligible.

c) Also, excess line brokers shall not place coverage with an insurer unless:

- the insurer's Financial Statements or other evidence demonstrates:
- the insurer is solvent and otherwise complies with the solvency requirements for the authorized insurers;
- has surplus sufficient to support its writings, reasonable in relation to its outstanding liabilities and adequate to its financial needs;
- claims practices have been, and continue to be, satisfactory; and
- management is trustworthy and competent.

d) Any time an excess line insurer does not meet the standards noted above, an excess line broker must:

- cease procuring from such insurer, and

- notify in writing within ten days, the Superintendent, excess line association, any producing broker and each insured, that coverage should be replaced in the excess line broker's judgment.

20. ELANY issued **Bulletin 2014-07** on March 19, 2014 explaining only premium and other taxable consideration for the insurance policy should be included on a binder or dec. page.

On March 31, 2014, **ELANY** issued **Bulletin 2014-08** stating that any entity or individual acting as a cover holder, managing general agent, managing general underwriter, or program administrator from a New York office, pursuant to a binding authority agreement entered into with an eligible excess line insurer must be properly licensed as an excess line broker and must file the binding authority agreement with ELANY.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
New York	§21 18(d)(1)	3.6% (+ 0.2% stamping fee payable to ELANY on all excess lines placements) (Additional fee of \$25 for late/erroneous filing). As of 7/1/2015, stamping fee reduced to 0.18%.

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
New York	N.Y. Tax Law §1551 N.Y. Tax Law §1554	3.6% (within 60 days after end of quarter in which business was procured)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
New York	1) Minimum \$100 million net worth; 2) Member of a holding company system having minimum \$100 million net worth; or 3) The metropolitan transportation authority and its statutory subsidiaries; or 4) A city with a population of one million or more. Subject to captive franchise taxes under §7012.	§7002(e)	§2101(x)(2) Same as NRRA.

From Appendix D: Surplus Lines Legislative Update 2014

NEW YORK

The Excess Line Association of New York (“ELANY”) issued **Bulletin 2014-07** on March 19, 2014 explaining only premium and other taxable consideration for the insurance policy should be included on a binder or dec. page.

On March 31, 2014, **ELANY** issued **Bulletin 2014-08** which states that any entity or individual acting as a cover holder, managing general agent, managing general underwriter, or program administrator from a New York office, pursuant to a binding authority agreement entered into with an eligible excess line insurer must be properly licensed as an excess line broker and must file the binding authority agreement with ELANY.

The following changes were included in the Final Adopted Version of the 14th Amendment to Regulation 41 effective as of October 8, 2014

1. Neither ELANY nor excess line brokers will be required to obtain:
 - an insurer's prospective three year business plan,
 - an executed copy of the insurer's trust agreement and periodic "funds in trust statement" from the trustee,
 - alien insurer IID Standard Financial Statements.
2. Foreign insurers will no longer be required to establish a \$2.5 million trust fund. Such trust funds which currently exist may be terminated in accordance with the terms of the trust agreement.
3. Service of Process/Consent to Jurisdiction.
 - §27.16 of Regulation 41 is deleted. This removed from the regulation **but not from the Insurance Law** requirements regarding consent to service of process and appointing the superintendent as agent for service of process. Eligible insurers should note that New York Insurance Law §1213(c) exempts unauthorized insurers from posting collateral or pre-answer security in litigation on risks placed through excess line brokers when the policy designates the superintendent as the lawful attorney upon whom lawful process may be served.
4. The following obligations are now directed at insurers where previously the excess line broker was responsible to verify the insurers conduct:
 - the insurer will be directly required to file an electronic EL-1 report on March 15th each year setting forth each New York excess line transaction bound in the prior calendar year.
 - unauthorized insurers will be directly prohibited from selling a)types of coverage which the excess line law bars excess line brokers from selling, b) coverages which are not recognized as legal types of insurance in New York, c) coverages which are prohibited by public policy.
 - insurers will be directly required to treat payment of premium to the excess line broker as payment to the insurer.

The following provisions of Regulation 41 remain unchanged:

1. Excess line brokers will continue to be required to obtain the following unless ELANY obtains these documents:
 - a copy of a foreign insurer's most recent Annual Statement,
 - evidence that the insurer is on the current IID Quarterly listing (alien insurers only),
 - a copy of the insurer's latest Report on Examination, only if accessible to the excess line broker,
 - a certificate of authority from the insurer's home jurisdiction verifying the kinds of insurance the insurer is permitted to underwrite.
2. Foreign insurers must maintain at least \$45M of policyholder surplus to be eligible.
3. Also, excess line brokers shall not place coverage with an insurer unless the insurer's Financial Statements or other evidence demonstrates:
 - the insurer is solvent and otherwise complies with the solvency requirements for the authorized insurers;
 - has surplus sufficient to support its writings, reasonable in relation to its outstanding liabilities and adequate to its financial needs;
 - claims practices have been, and continue to be, satisfactory; and
 - management is trustworthy and competent.
4. Any time an excess line insurer does not meet the standards noted above, an excess line broker must:
 - cease procuring from such insurer, and
 - notify in writing within ten days, the Superintendent, excess line association, any producing broker and each insured, that coverage should be replaced in excess line broker's judgment.



2015 Excess and Surplus Lines Laws: North Carolina

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

NORTH CAROLINA

General Information:

1. North Carolina **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. North Carolina **does** have a Surplus Lines Association (see Other Comments section #2).
3. North Carolina **does not** have an Export List.
4. North Carolina **does not** have an industrial insured exemption but has adopted the NRRRA exempt commercial purchaser exemption (§ 58-21-16(b)(1)).
5. **Surplus lines tax:** 5%, payable by broker.
6. North Carolina **has not** affiliated with any existing compact (SB 321).

Eligibility and Filing Requirements (All Insurers):

Fees: \$500 (initial filing) and \$1,000 (annual renewal).

Eligibility and Filing Requirements (Alien Insurers Only):

1. Alien surplus lines insurers are expected to file audited financial statements within six months after their fiscal year end. These financial statements should be reported in United States currency.
2. A surplus lines broker may place insurance with an alien insurer if that insurer is listed on the Quarterly List of Alien Insurers maintained by the NAIC. § 58-21-17.

Eligibility and Filing Requirements (Foreign Insurers Only):

1. If the insurer's annual statement for the most recent December 31 is filed electronically with the NAIL, the NC DOI will no longer require a hard copy of

the annual statement to be filed. However, each eligible surplus lines insurer must file a hard copy of its certificate of compliance and verification of deposit from the state of domicile.

2. A surplus lines broker may place insurance with a nonadmitted insurer if:
 - The insurer is authorized to place that type of insurance in its domiciliary jurisdiction; and
 - The insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that is the greater of the minimum capital and surplus requirements under the laws of this state or \$15 million.

The insurance commissioner may waive the minimum capital and surplus requirements for unauthorized foreign insurers if he makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 58-21-20.

Types of Insurance Exempted from Surplus Lines Regulation:

Aviation insurance/wet marine and transportation insurance.

Other Comments or Requirements:

1. Eligibility list available at www.ncdoi.com.
2. Contact information for the North Carolina Surplus Lines Association is as follows:

Elaine Christian, Executive Director
North Carolina Surplus Lines Association

P.O. Box 41368
Raleigh, North Carolina 27629-1368
Phone: (919) 876-0687
Website: www.ncsla.com

Select "Surplus Lines" from the menu on the left, and select "List of Authorized Surplus Lines Companies."

3. North Carolina provides for an affirmative finding of acceptability by the Commissioner based on stated factors pertaining to companies with \$4,500,000 to \$14,999,999 combined capital and surplus.
4. Lloyd's plans or other similar unincorporated groups' individual insurers must maintain an irrevocable trust fund of not less than \$50,000,000 as security for all policyholders and creditors in the United States of each member of the Group. This trust fund must be held in a national bank or a member of the Federal Reserve System and must have an expiration date which at no time shall be less than five years in the future.
5. Insurance exchanges created by the laws of individual states must have and constantly maintain total capital and surplus, or the substantial equivalent thereof, of not less than \$50,000,000 in the aggregate. Each individual syndicate must have and constantly maintain total capital and surplus, or the substantial equivalent thereof, of not less than \$3,000,000.
6. Renewal Application and Instructions may be processed through the North Carolina Insurance Department's website by going to www.ncdoi.com and selecting "Industry" at the top of the page.
7. Each eligible surplus lines insurer underwriting service contract reimbursement or contractual liability insurance policies for service agreement companies pursuant to Article 1 of Chapter 58 must file the policies directly with the NC DOI's Property and Casualty Division for approval prior to being used for any purpose in NC in accordance with NAGS 58-1-36.
8. Each eligible surplus lines insurer is expected to notify the NC DOI of all corporate changes within the company, including changes in the United States Attorney-in-Fact for alien insurers.
9. Every evidence of insurance negotiated, placed, or procured by the surplus lines licensee must bear the name of the licensee and the following legend in 10-point type and in contrasting color:

The insurance company with which this coverage has been placed is not licensed by the State of North Carolina and is not subject to its supervision. In the event of the insolvency of the insurance company, losses under this policy will not be paid by any State insurance guaranty or solvency fund.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
North Carolina	§58-21-85	5% (filing dates vary for resident and non-resident agents)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
North Carolina	§58-28-5(b)	5% (within 30 days)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
North Carolina	No.	----	§58-21-16(b)(1) Same as NRRRA



2015 Excess and Surplus Lines Laws: North Dakota

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

NORTH DAKOTA

General Information:

1. North Dakota **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. North Dakota **does not** have a Surplus Lines Association.
3. North Dakota **does** have an Export List.
4. North Dakota currently **does** have an industrial insured exemption which will remain in effect (see Appendix C). Additionally, North Dakota has adopted the NRRRA exempt commercial purchaser exemption (26.1-44-01.1(3)).
5. **Surplus lines tax:** 1.75% on gross premiums allocated to ND plus applicable tax and fees on gross premiums allocated to other states, payable by broker.
6. North Dakota **has** adopted **SLIMPACT** (HB 1123).

Eligibility and Filing Requirements (All Insurers):

1. **Power of Attorney, Affidavit and Data Forms.**
2. **Filing or Other Renewal Fee:** \$100 (non-refundable application fee); \$25 (power of attorney fee upon approval of application); \$10 for filing renewal affidavit.

Eligibility and Filing Requirements (Alien Insurers Only):

Must be listed on NAIC's Quarterly Listing of Alien Insurers.

Eligibility and Filing Requirements (Foreign Insurers Only):

1. **Evidence of good repute and financial integrity.**
2. **Capital & Surplus:** \$15,000,000.
3. **Annual Statement.**
4. **Report of Examination.**

Types of Insurance Exempted from Surplus Lines Regulation:

For Exempt Commercial Purchasers: producer is not required to make a due diligence search if proper disclosure made and purchaser makes a written request for procurement.

Other Comments or Requirements:

1. North Dakota eligibility list available through "Company Search" at www.nd.gov/ndins/find.
2. A North Dakota surplus lines producer must provide a report and an affidavit that he has performed a diligent search of the admitted market for placing the surplus lines insurance within 60 days after the effective date of a surplus lines policy.
3. North Dakota allows a North Dakota domestic insurer to be designated a domestic surplus lines insurer if:
 - The insurer possesses policyholders' surplus of at least \$15 million;
 - The designation is in compliance with a resolution of the insurer's Board of Directors; and

- The commissioner has provided written approval of the designation.

Domestic surplus lines insurers are subject to compliance with all financial examination and solvency requirements that apply to domestic insurers regarding examinations and reports.

4. If the insured's homestate is North Dakota, the surplus lines producer must give the following consumer notice to every person applying for insurance with a nonadmitted insurer. The notice must be printed in sixteen point type on a separate document affixed to the application. The applicant must sign and date a copy of the notice to acknowledge receiving it. The surplus lines producer must maintain the signed notice in its file for a period of five years from expiration of the policy. The surplus lines producer must tender a copy of the signed notice to the insured at the time of delivery of each policy the producer transacts with a nonadmitted insurer. The copy must be a separate document affixed to the policy.

Notice: 1. an insurer that is not licensed in this state is issuing the insurance policy that you have applied to purchase. These companies are called "nonadmitted" or "surplus lines" insurers. 2. The insurer is not subject to the financial solvency regulation and enforcement that applies to licensed insurers in this state. 3. These insurers generally do not participate in insurance guaranty funds created by state law.

These guaranty funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised. 4. Some states maintain lists of approved or eligible surplus lines insurers and surplus lines producers may use only insurers on the lists. Some states issue orders that particular surplus lines insurers cannot be used. 5. For additional information about the above matters and about the insurer, you should ask questions of your insurance producer or surplus lines producer. You may also contact your insurance department consumer help line.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
North Dakota	§26.1-03-17 §26.1-44-06	1.75% (annually)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
North Dakota	§26.1-44-10 §26.1-44-03.1	1.75% (annually)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
North Dakota	1) Insurance (excluding life and annuity contracts) procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees.	§26.1-02-05(9)	§26.1-44-01.1(3) Same as NRRA.



2015 Excess and Surplus Lines Laws: Ohio

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

OHIO

General Information:

1. Ohio **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Ohio **does** have a Surplus Lines Association, the Ohio Association of Professional Specialty Lines (www.oapslo.org).
3. Ohio **does not** have an Export List.
4. Ohio **does not** have an industrial insured exemption but the NRRRA exempt commercial purchaser exemption is in effect. (§ 3905.331).
5. **Surplus lines tax:** 5%, payable by broker.
6. Ohio **has not** affiliated with any existing compact (HB 122).

Eligibility and Filing Requirements (Alien Insurers Only):

Alien insurers must be on the Quarterly Listing of Alien Insurers maintained by the NAIC. § 3905.33(A)(2).

Eligibility and Filing Requirements (Foreign Insurers Only):

A surplus lines broker may not place coverage with a nonadmitted insurer unless, at the time of placement, the nonadmitted insurer:

- Is authorized to write such insurance in its domiciliary jurisdiction; and
- Possesses capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of Ohio or \$15 million. (§ 3905.33(A)(1)).

Types of Insurance Exempted from Surplus Lines Regulation:

Ocean marine insurance is exempt from reporting and taxation requirements when placed by a licensed agent.

Other Comments or Requirements:

1. Ohio eligibility list is available at www.insurance.ohio.gov/Reports/SLCompanies.pdf.
2. Commissioner may also require a deposit in the state.
3. Ohio Insurance Department prefers the following language to appear on the Declaration page of surplus lines policies:

THE INSURANCE HEREBY EVIDENCED IS WRITTEN BY AN APPROVED NON-LICENSED INSURER IN THE STATE OF OHIO AND IS NOT COVERED IN CASE OF INSOLVENCY BY THE OHIO INSURANCE GUARANTY ASSOCIATION.

4. The Ohio Insurance Department has an on-line reporting system for payment of the surplus lines tax. Information on this system can be found at <http://www.insurance.ohio.gov/secured/pages/securedapps.aspx>.
5. The link to ORC §3905.33 reflecting the changes in Ohio's Insurance Code to comply with the NRRRA may be found at codes.ohio.gov/orc/3905.33.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Ohio	§3905.36	5% (annually before March 31)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Ohio	§3905.36	5% (annually)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Ohio	No	----	§3905.331 Same as NRRRA.



2015 Excess and Surplus Lines Laws: Oklahoma

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

OKLAHOMA

General Information:

1. Oklahoma **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Oklahoma **does not** have a Surplus Lines Association.
3. Oklahoma **does not** have an Export List.
4. Oklahoma **does** have an industrial insured exemption applicable to life insurers only (see Appendix C). Oklahoma has also adopted the NRRRA exempt commercial purchaser exemption. (§ 36-1106.1(B)).
5. **Surplus lines tax:** 6%, payable by broker.
6. Oklahoma **has not** affiliated with any existing compact but commissioner has discretion to enter into NIMA or any other multi-state agreement or compact with the same function or purpose. (§ 36-1106.1(B)).

Eligibility and Filing Requirements (All Insurers):

Annual Statement/Report: in U.S. dollars (by August 30 for alien insurers).

2. **Certificate of Approval Filing:** \$150 annually, due upon approval of application.
3. **Fraud Fee** of \$750 (due 7/31) and **Designation of Agent Fee** of \$10, due upon approval.
4. **Certificate of Approval** (Renewal fee): \$650 (\$500 review fee/\$150 certificate of approval fee) (Foreign – March 1; Alien – August 30).
5. **Application Fee:** \$1,000.
6. **Annual Premium Report:** by Oklahoma broker listing risk, premium amount and address of risk due April 1.

Eligibility and Filing Requirements (Alien Insurers Only):

A surplus lines broker may place insurance with an alien insurer if that insurer is listed on the Quarterly List of Alien Insurers maintained by the NAIC. 36-1106(1)(c).

Eligibility and Filing Requirements (Foreign Insurers Only):

A surplus lines broker may place insurance with a foreign insurer if:

- The insurer is licensed in its domiciliary jurisdiction; and
- The insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that is the greater of the minimum capital and surplus requirements under the laws of this state or \$15 million.

The insurance commissioner may waive the minimum capital and surplus requirements for unauthorized foreign insurers if he makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. 36-1106(1)(b). The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. 36-1106(1)(a) and (b).

Types of Insurance Exempted from Surplus Lines Regulation:

None.

Other Comments or Requirements:

1. Oklahoma eligibility list is available at www.ok.gov/oid.
2. Insurance contracts procured as surplus lines coverage shall contain in bold-face type notification stamped on the declaration page of the policy that such contracts are not subject to the protection of any guaranty association in the event of liquidation or receivership of the insurer.
3. Insurance may not be procured from unauthorized insurers in Oklahoma unless the interest of the insured cannot be procured from authorized insurers *after direct inquiry to such insurers* by a licensed surplus lines broker.
4. Oklahoma no longer has a bond requirement for non-resident surplus lines brokers.
5. Oklahoma exempts surplus lines brokers from penalty of writing business without a license if they submit an application within 30 days.
6. Oklahoma allows for compulsory auto liability insurance for commercial auto to be issued by surplus lines insurers.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Oklahoma	36 §§629, 1115	6% (on or before end of month following calendar quarter) If premium tax of previous year greater than \$1000, remit quarterly estimates.

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Oklahoma	§1115(B)(1)	6% (annually)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Oklahoma	No	§6470.2 §4202	36 § 1106.1(B) Same as NRRRA.



2015 Excess and Surplus Lines Laws: Oregon

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

OREGON

General Information:

1. Oregon **does not** maintain an active list of approved surplus lines insurers (see Other Comments section #1).
2. Oregon **does** have a Surplus Lines Association (see Other Comments section #2).
3. Oregon **does not** have an Export List.
4. Oregon **does not** have an industrial insured exemption. Oregon has adopted the NRRRA exempt commercial purchaser exemption but has eased some of the requirements (see Appendix C) to qualify as such a purchaser (ORS 735.405(6)).
5. **Surplus lines tax:** 2% payable by broker, and an additional 0.3% fire marshal tax payable by broker, plus \$15 flat stamping fee applicable for each new or renewal (not endorsement) transaction (see Other Comments section #4).
6. Oregon **has not** affiliated with any existing compact but Director of the Dept. of Consumer and Business Services is authorized under Departmental Bulletin to enter into a compact or otherwise establish procedures with other states. (HB 2679). At present, Oregon is keeping 100% of the surplus lines premium tax when the policy covers an Oregon home state insured.

Eligibility and Filing Requirements (All Insurers):

Annual Statement/Report: in U.S. dollars (affidavit of filing with NAIC acceptable for foreign insurers).

Eligibility and Filing Requirements (Alien Insurers Only):

Trust Fund: \$5.4 million; or listed on the NAIC Quarterly List of Alien Insurers as of the date of placement of the policy.

Eligibility and Filing Requirements (foreign Insurers Only):

1. **Certificate of Good Standing** from domicile state.
2. **Capital and Surplus:** \$15,000,000

Types of Insurance Exempted from Surplus Lines Regulation:

Wet marine and transportation insurance, reinsurance, life, health, annuities cannot be written as surplus lines. The following risks are exempt from surplus lines tax: 1) Federal government entities; 2) Federal chartered credit unions; and 3) Insurance policies purchased by Native American tribes or tribal member covering exposures located on Indian reservation.

Other Comments or Requirements:

1. The Oregon Surplus Lines Association at www.oregonsla.org does maintain a list of eligible surplus lines insurers in Oregon for informational purposes only, not for approval status.

Oregon is a "broker responsible" state and therefore surplus lines eligibility status for both foreign and alien insurers is based on the broker's determination that the insurer is acceptable.

See www.oregonsla.org/resources/insurer-listing.

See "Insurer List" tab for a list of nonadmitted insurers who have provided a certified copy of their current annual statements to the state of Oregon

as required by ORS 735.415 (1)(c), indicating compliance with the minimum requirements of ORS 735.415(1)(c) as of the date of the statement.

2. Contact information for the Oregon Surplus Lines Association is as follows:

Roger Helbling
Surplus Lines Association of Oregon
7360 SW Hunziker Street, Suite 105
Portland, OR 97223-2305
Phone: (503) 718-6700
Fax: (503) 718-6702
Email: Roger@OregonSLA.org

3. Each insurance policy or certificate of insurance negotiated, placed or procured by the surplus line licensee must bear the name of the licensee and the following legend in bold type:

This insurance was procured and developed under the Oregon surplus lines laws. It is NOT covered by the provisions of ORS 734.510 to 734.710 relating to the Oregon Insurance Guaranty Association. If the insurer issuing this insurance becomes insolvent, the Oregon Insurance Guaranty Association has no obligation to pay claims under this insurance.

4. The Surplus Line Association of Oregon makes available to any interested party a "tax calculator" which enables interested parties to easily determine the taxes and charges applicable to a proposed transaction. The "tax calculator" may be assessed at the association's website: www.oregonsla.org.
5. Foreign and alien insurers writing wet (ocean) marine business in Oregon are required to complete and file an "Ocean Marine Tax Report" by June 15 of each year and pay a special ocean marine tax. This tax is based on 5% of the company's average underwriting profit for such business written in Oregon over a 3-year period. The forms are available on the Oregon Insurance Division website: www.insurance.oregon.gov.
6. Oregon allows surplus lines insurers to provide auto coverage under the financial responsibility provisions.

7. The OR Insurance Commissioner may accept foreign insurers on a case by case basis who do not meet the minimum capital requirements but in no event may the Commissioner make an affirmative finding of acceptability when the surplus is less than \$4.5 million.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Oregon	§731.820(1) §735.470	2% payable by broker, and an additional 0.3% on "fire" related coverages payable by broker, plus \$15 flat stamping fee applicable for each new or renewal (not endorsement) transaction.

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Oregon	§735.417 §735.470	2% payable by insured, and an additional 0.3% on "fire" related coverages, payable by insured. (Insured must also file a written report with Oregon Director, within 30 days after insurance was procured, showing name and address of insurer; the subject of the insurance; the amount of the premium charged; and any additional pertinent information reasonably requested by the Director).

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Oregon	No	---	<p>§ 735.405(b)</p> <p>Same as NRRA, except the following standards are relaxed.</p> <p>(A) The person possesses a net worth in excess of \$10 million, as such amount is adjusted pursuant to section 7 of this 2011 Act. <i>[reduced from \$20 million]</i></p> <p>(B) The person generates annual revenues in excess of \$20 million, as such amount is adjusted pursuant to section 7 of this 2011 Act. <i>[reduced from \$50 million]</i></p> <p>(C) The person employs more than 50 full-time or full-time equivalent employees for each insured or is a member of an affiliated group employing more than 100 employees in the aggregate. <i>[Reduced from 500 and 1,000 respectively]</i></p>



2015 Excess and Surplus Lines Laws: Pennsylvania

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

PENNSYLVANIA

General Information:

1. Pennsylvania **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Pennsylvania **does** have a Surplus Lines Association (see Other Comments section #4).
3. Pennsylvania **does** have an Export List (see Other Comments section #7).
4. Pennsylvania **does** have an industrial insured exemption (40 P.S. 46(a)(6)). Additionally, Pennsylvania has adopted the NRRRA exempt commercial purchaser exemption (40 P.S. §991.1610).
5. **Surplus lines tax:** 3% on gross premiums less any returns, plus a non-refundable, annual stamping fee of \$25 per original filing; subject to additional stamping fees for late or incomplete filings. Neither the additional fee for a late or incomplete filing may be passed on to the insured (Additional fee of \$25 applies for late filing).
6. Pennsylvania **has not** affiliated with any existing compact (SB 1096). Pennsylvania taxes 100% of the premium when Pennsylvania is deemed to be the home state.

Eligibility and Filing Requirements (Alien Insurers Only):

The following qualification must be met by those alien companies seeking surplus lines eligibility (See Section 1605 of the Insurance Company Law (40 P.S. Section 991.1605)):

The company is listed on the Quarterly List of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners ("NAIC").

If the company meets the above qualification, the following item should be provided:

A written request for surplus lines eligibility to include documentation evidencing listing by the NAIC.

Eligibility and Filing Requirements (Foreign Insurers Only):

The following qualifications must be met by those foreign (U.S.) surplus lines companies seeking surplus lines eligibility (See Section 1605 of the Insurance Company Law (40 P.S. Section 991.1605)):

1. Is authorized to write the type of insurance in its domiciliary jurisdiction; and
2. Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which is greater than or equal to \$15,000,000.

The requirement of paragraph 2 may be satisfied by an insurer's possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the Commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability and company record and reputation within the industry. In no event will the Commissioner make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than \$4,500,000.

If the company meets the above qualifications, the following items should be provided:

- A written statement by an officer of the insurer identifying the kinds of insurance coverages the insurer intends to write and the types of risks the insurer intends to insure in Pennsylvania.

- A copy of the certificate of authority of the insurer or similar document setting forth its authority to issue policies and insure risks in the jurisdiction in which the insurer is incorporated, formed or organized.
- A copy of the jurat page from the latest annual financial report or statement of the insurer signed by the officers of the insurer and filed with the insurance regulatory authority or other governmental authority in the jurisdiction in which the insurer is incorporated, formed or organized. If this is not sufficient for the PA DOI's purposes, the insurer should be prepared to send the entire financial report upon request.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Wet marine and transportation insurance which includes:
 - Insurance upon vessels, crafts or hulls and of interests therein or with relation thereto.
 - Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance.
 - Insurance of freights cargo and disbursements pertaining to a subject of insurance coming within this definition.
 - Insurance of personal property and interest therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters, 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 delays, transshipment or reshipment incident thereto.
2. Reinsurance.
3. Life insurance and annuities.
4. Independently procured insurance.
5. Coverage obtained from risk retention groups under the Risk Retention Amendments of 1986.

Other Comments or Requirements:

1. Pennsylvania eligibility list available at <http://www.pasla.org/HTML/EligibleList.htm>.
2. Surplus lines insurer must advise state of any pending litigation in the United States involving an insurance department.
3. Sec. 1606 of Pennsylvania surplus lines law allows for the export of a portion not to exceed 25% of a risk to a non-admitted insurer which does not appear on the Department's eligible surplus lines list.
4. Contact information for the Pennsylvania Surplus Lines Association is as follows:

Kenneth A. Rudert, Executive Director
 Pennsylvania Surplus Lines Association
 180 Sheree Boulevard, Suite 3100
 Exton, Pennsylvania 19341
 Telephone: (610) 594-1340
 Fax: (610) 594-7623
 Email: krudert@pasla.org

5. Every evidence of insurance negotiated, placed or procured by the surplus lines licensee must bear the name of the licensee and the following legend in 10-point type:

The insurer which has issued this insurance is not licensed by the Pennsylvania Insurance Department and is subject to limited regulation. This insurance is NOT covered by the Pennsylvania Insurance Guaranty Association.

6. Under Bulletin B-2012-9-11, for placements effective 1/1/2013, the producing broker, representing the insured in a given transaction, is no longer required to list on the 1609-PR form the minimum of three licensed carriers who have declined the risk as defined. The laws have not changed, but the affidavit form is being revised. The compliance requirements as stated in Section 1609 of the Pennsylvania Surplus Lines Law as amended July 1, 2011 and Section 124.5 of the Regulations that support the Law continue to require evidence of declinations documented in the producing broker's file in the event of future request.

7. Pennsylvania changed the filing requirement which must be made within 45-calendar days after the placement of an insurance coverage that appears on the state's most recent Export List. The change replaces the old requirement that the surplus lines licensee needed to file with the PA DOI a copy of the declaration page of the policy, cover note, binder or other evidence of insurance delivered by the surplus lines licensee with the word "EXPORT" stamped in red letters in the upper right hand corner. It is now only required to file a written declaration reporting the transaction on a form prescribed by the PA DOI (Form 1604-E).
8. In 2014 Pennsylvania updated 31 PA. Code Ch. 124, implementing changes that will reduce required documentation for foreign insurers to demonstrate eligibility. The Pennsylvania DOI will rely more on information available through the NAIC ISITE system. In addition to their Certificate of Authority, foreign insurers only need to submit their jurat page to the Pennsylvania DOI. The updated code also clarifies how a producer should document its diligent search effort in the placement of a policy, and stipulates that the diligent search form may be signed electronically.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Pennsylvania	§40 §991.1621	3% (+ \$25 stamping fee) (annually) (Note: stamping fee becomes \$50 per original filing if received after 45 days from effective date of policy).

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Pennsylvania	§40-15-122(b)	3% (within 30 days)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Pennsylvania	An “industrial insured” is an insured: 1) Who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant; 2) Whose aggregate annual premiums for insurance on all risks total at least \$25,000; and 3) Who has at least 25 full-time employees.	40 P.S. § 46(e)(6)	40 P.S. § 991.1610 Same as NRRRA.

From Appendix D: Surplus Lines Legislative Update 2014**PENNSYLVANIA**

The Pennsylvania Department of Insurance (“PDOI”) issued a notice that it has updated 31 PA. Code Ch. 124, implementing changes that will reduce required documentation for foreign insurers to demonstrate eligibility. The PDOI will rely more on information available through the NAIC ISITE system. In addition to their Certificate of Authority, foreign insurers only need to submit their jurat page to the PDOI. The updated code also clarifies how a producer should document its diligent search effort in the placement of a policy, and stipulates that the diligent search form may be signed electronically.



2015 Excess and Surplus Lines Laws: Puerto Rico

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

PUERTO RICO

General Information:

1. Puerto Rico **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Puerto Rico **does not** have a Surplus Lines Association.
3. Puerto Rico **does not** have an Export List.
4. Puerto Rico **does not** have an industrial insured exemption and has not adopted the NRRRA exempt commercial purchaser exemption.
5. **Surplus lines tax:** 9%, payable by broker.
6. Puerto Rico **has** adopted **NIMA**.

Eligibility and Filing Requirements (All Insurers):

Puerto Rico no longer imposes a fee, financial, premium or other information from foreign and/or alien insurers for surplus lines eligibility purposes, aside from the eligibility requirements set forth in NRRRA.

Types of Insurance Exempted from Requirement that Risk be Procured from an Eligible Surplus Lines Insurer:

Air and ocean marine risks (see Other Comments or Requirements #6).

Other Comments or Requirements:

1. Puerto Rico surplus lines insurer's eligibility list is available at: http://ocs.gobierno.pr/ocspr/documents/regulation/Licenciasexp/lineasExcedentes_i.pdf.
2. When a particular risk cannot be insured in whole or in part with an eligible surplus lines insurer, the surplus lines broker may place the risk with an unauthorized insurer if the insurer submits a \$20,000

special deposit with the Secretary of the Treasury of the Commonwealth of Puerto Rico, through the Commissioner.

For such placements the policy must state conspicuously on its face the following recital in red letters:

All or a number of the insurers participating in this insurance have not been authorized to transact business in Puerto Rico nor approved as surplus line insurers by the Commissioner of Insurance of this Commonwealth. The transaction of this insurance by a licensed surplus line insurance broker shall not be construed to mean that the Commissioner of Insurance of Puerto Rico approves of such insurer.

3. Surplus lines coverage on medical malpractice business is not limited to be only in excess of authorized coverage, whenever the amount offered by authorized insurers in primary coverage is not enough to apply for excess coverage. In such case, the surplus lines broker may discard the available primary coverage and obtain the entire coverage in the surplus lines market.
4. Surplus lines policies on medical malpractice are exempted from premium taxes.
5. Company seeking eligibility status must have been in business at least 5 years.
6. Air and ocean marine risks subject to surplus lines premium tax provisions.
7. Puerto Rico requires the surplus lines broker to obtain 5 declinations of coverage from admitted insurers before attempting to place the risk in the surplus lines market. These offerings of coverage are made by the broker by completing a form and using

the distribution center which has been established by the Puerto Rico DOI for this purpose. However, the sl broker may consider the risk rejected if he does not receive a reply from such insurers within 5 working days from the date on which the distribution center received the form to make the corresponding distribution. (Rule XXVIII Art.1 and 2)

8. The Office of the Commissioner of Insurance is currently in the process of amending the Puerto Rico Insurance Code provision in compliance with the nationwide uniform requirements set forth by NRRRA.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Puerto Rico	T.26 §1013	9% (within 60 days)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Puerto Rico	T.26§702	4% (1% on annuity remuneration) (only applies to insurers)
	T.26§1020	15% (for domestic brokers transacting insurance with unauthorized insurers, but not with eligible surplus lines brokers)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Puerto Rico	No	----	Not codified.



2015 Excess and Surplus Lines Laws: Rhode Island

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

RHODE ISLAND

General Information:

1. Rhode Island **maintains** a list of eligible surplus lines insurers (foreign companies only) (see Other Comments section #1).
2. Rhode Island **does not** have a Surplus Lines Association.
3. Rhode Island **does not** have an Export List.
4. Rhode Island **does** have an industrial insured exemption applicable to captive insurers only which will remain in effect. Rhode Island has also incorporated the NRRRA exempt commercial purchaser exemption as per Bulletin 2011-6.
5. **Surplus lines tax:** 4%, payable by broker.
6. Rhode Island **has** adopted **SLIMPACT** (HB 5110).

(Note: Rhode Island has also extended the 2% tax on insurance gross premiums to the Medical Malpractice Joint Underwriters Association).

Eligibility and Filing Requirements (All Insurers):

Annual Premium Report: by July 31 (required by Rhode Island Division of Taxation. Reports and Questions should be addressed to Division of Taxation).

Eligibility and Filing Requirements (Alien Insurers Only):

A broker may place business with an alien insurer if the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC. (Per Insurance Division Guidance, issued 9/28/2011).

Eligibility and Filing Requirements (Foreign Insurers Only):

A surplus lines broker may place insurance with a foreign insurer if:

- The insurer has established satisfactory evidence of good repute and financial integrity; and
- The insurer is authorized to place that type of insurance in its domiciliary jurisdiction; and
- The insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that is the greater of the minimum capital and surplus requirements under the laws of this state or \$15 million.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Policies issued outside Rhode Island involving insurance on vessels, crafts, or hulls, cargoes, marine protection and indemnity or other risks including strikes and war risks commonly insured under ocean marine or wet marine forms.
2. Out-of-state risks.
3. Industrial Insurance which is defined as an insured:
 - Which procures the insurance of any risk by the use of the services of a full time employee acting as insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant;
 - Whose aggregate annual premiums on all risks excluding workers' compensation and group total at least twenty-five thousand dollars (\$25,000); and

- Which has at least twenty-five (25) full time employees.

Other Comments or Requirements:

1. Rhode Island eligibility list available at www.dbr.ri.gov/divisions/insurance/licensed.php.
2. Rhode Island exempts an insured and surplus lines brokers from the requirement of filing an affidavit when obtaining surplus lines insurance for certain insurable interests. The exempted risks include: 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.
3. Regulations were promulgated in 2009 to eliminate the filing of a surplus lines affidavit with RIDOI. The affidavit must still be completed and is subject to audit by the RIDOI, but filing with the RIDOI is no longer required.
4. Insurance Regulation 11, governing surplus lines brokers, was amended to: 1) allow a non-resident surplus lines broker to apply for a non-resident surplus lines broker's license without first obtaining a resident property and casualty insurance producer's license; 2) increase the tax from 3% to 4% on gross premiums for policies effective on or after July 1, 2011; 3) maintain the 3% tax on gross premiums for policies effective prior to July 1, 2010; and 4) require brokers to include written notice in applications and policies about the unavailability of benefits under Rhode Island's Insurers Insolvency Fund.
5. Every application form for insurance from a surplus lines insurer, every affidavit form executed by the insured, and every policy (on its front and declaration pages) issued by the surplus lines insurer, shall contain in 10 point type the following notice:

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.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Rhode Island	§27-3-38(d)	4% (quarterly estimate, plus annual broker report).

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Rhode Island	§27-3-38.1	4% (Insured must also file written report with the tax administrator, in a form that he or she may prescribe, within 30 days after the date the insurance was procured, continued or received).

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Rhode Island	1) Insurance procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant;	§27-16-1.2(a)(8)	§ 27-3-38.
	2) Minimum \$25,000 aggregate annual premiums (excluding workers' compensation and group); and		Same as NRRRA.
	3) Minimum 25 full-time employees.	§27-43-1(6) (Relates to Captives)	
	No information regarding taxes.		
	1) Insurance procured through full-time insurance manager or buyer;		
	2) Minimum \$25,000 aggregate annual premiums; and		
	3) Minimum 25 full-time employees.		
	Subject to taxes specific to captives under §27-43.9		



2015 Excess and Surplus Lines Laws: South Carolina

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

SOUTH CAROLINA

General Information:

1. South Carolina **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. South Carolina **does not** have a Surplus Lines Association.
3. South Carolina **does not** have an Export List.
4. South Carolina **does** have an industrial insured exemption (see Appendix C) which will remain in effect. As of 7/21/2011, the NRRRA exempt commercial purchaser exemption is also effective.
5. **Surplus lines tax:** 6%, payable by broker (see Other Comments section #3).
6. South Carolina **has not** become affiliated with any tax sharing agreement but collects 100% of the surplus lines premium tax when it is the home state.

Eligibility and Filing Requirements (Alien Insurers Only):

Applicant must be listed on the NAIC IID List. Once approved to be added to the Department's list of Alien Eligible Surplus Lines Insurers, a company must remain on the NAIC IID List. Should the SC DOI receive notification from the NAIC that a company has been removed from the IID List, it will immediately be removed from the SC DOI's list of Alien Eligible Surplus Lines Insurers.

Eligibility and Filing Requirements (Foreign Insurers Only):

1. A properly executed annual statement as filed with the insurance department of the Applicant's home state and certified to that effect showing a minimum

of \$15 million in capital and surplus. A quarterly statement should also be included in an application submitted more than one month and fifteen days after the end of the most recent quarter. If the most recent annual and quarterly statements are filed with the NAIC, these items are not required to be submitted.

2. A current Certificate of Compliance/Authority from the insurance department of its home state which shows the lines of business that the company is authorized to write in its home state.

Types of Insurance Exempted from Surplus Lines Regulation:

Wet marine and transportation insurance, insurance independently procured, and life and health insurance and annuities. See S.C. Code Ann. Section 38-1-20(56).

Other Comments or Requirements:

1. South Carolina's list of eligible surplus lines insurers is available under General Information at: <http://doi.sc.gov>.
2. A foreign or alien eligible surplus lines insurer is not permitted to write any class of business in South Carolina for which it is not authorized by its charter.
3. As set forth in 2012 S.C. Act 283 (Act 283) enacted June 29, 2012, the 2% municipal business license tax no longer applies to non-admitted insurers. The surplus lines tax is now a blended rate of 6% and applies to all surplus lines premiums written from July 1, 2012. All premium tax payments must be paid online to the South Carolina DOI.
4. Surplus lines policies in South Carolina must contain the following disclosure statement. See S.C. Code Ann. Section 38-45-110 (2002):

This company has been approved by the director or his designee of the South Carolina Department of Insurance to write business in this State as an eligible surplus lines insurer, but it is not afforded guaranty fund protection.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
South Carolina	2012 S.C.Act 283	6% blended rate, paid by broker online to the South Carolina DOI. The 2% municipal business tax no longer applies.

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
South Carolina	----	----

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
South Carolina	1) Insurance procured through full-time risk or insurance manager, or regularly and continuously qualified insurance consultant; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees.	§38-25-150(8) §38-90-10(16)	§ 38-45-10, § 38-45-90. Same as NRRA.



2015 Excess and Surplus Lines Laws: South Dakota

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

SOUTH DAKOTA

General Information:

1. South Dakota **does not maintain** a list of eligible surplus lines insurers.
2. South Dakota **does not** have a Surplus Lines Association.
3. South Dakota **does not** have an Export List.
4. South Dakota **does not** have an industrial insured exemption but does recognize a commercial purchaser exemption. South Dakota has not yet updated its exempt commercial purchaser exemption to match that of the NRRRA (see Appendix C).
5. **Surplus lines tax:** 2.5% (3% for fire insurance), payable by broker, or individual (if self-procured).
6. South Dakota has adopted **NIMA** (HB 1030). Multi-state risks where South Dakota is the home state and other **NIMA** states are involved, will be taxed based on each **NIMA** state's tax rate. Non-**NIMA** states will be taxed at South Dakota's tax rate. Single state risks will be submitted as usual if South Dakota is the home state.

Eligibility and Filing Requirements (All Insurers):

SD requirements for a surplus lines insurer remain the same as before aside from the requirements under NRRRA. Surplus lines insurers will be required to file the Unauthorized Insurer Business Written & Premium Tax Report along with the Schedule T & State Page for Foreign companies. Alien surplus lines companies will be required to file the Unauthorized Insurer Business Written & Premium Tax Report.

Eligibility and Filing Requirements (Alien Insurers Only):

1. **Premium report** (see above).
2. **NAIC Listing**.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Ocean marine and foreign trade insurance.
2. Insurance on subjects located, resident, or to be performed wholly outside of South Dakota or on vehicles or aircraft owned and principally garaged outside of South Dakota.
3. Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.
4. Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of the aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of the aircraft.

Other Comments or Requirements:

1. Burden is on broker to satisfy himself that company is financially solvent and has requisite trust fund. If alien insurer does not have trust fund then application for eligibility must be made to Director of Insurance.

2. South Dakota insurance business written by a *non-admitted* company **must** be placed through a:
 - Resident or non-resident producer, licensed as a Surplus Lines Broker; or
 - Surplus Lines Broker for risk retention groups or risk purchasing group -Restricted License.
3. A Surplus Lines Broker license may be issued to a Non-Resident agent, in good standing in his state, doing business pursuant to the Federal Risk Retention Act of 1986. The surplus lines broker authority in this instance is limited to the solicitation of commercial liability to only purchasing group or risk retention group members located in South Dakota.
4. A 2.5% tax on self-procured insurance is payable by the insured. The responsibility to inform such insured of his duty to remit the premium tax is placed upon the underwriting insurer, due to his status as the sophisticated party in the insurance transaction.
5. South Dakota permits a uniform report to be filed in lieu of an annual statement or affidavit as to exported insurance. The uniform report must contain information sufficient to determine the amount and type of surplus lines insurance written in the state and sufficient to determine the appropriate amount of tax to be paid.
6. The South Dakota DOI issued a Bulletin in 2013 requiring all single-state surplus lines policies issued or renewed after January 1, 2013 and any subsequent endorsements to those policies, to be filed through the NIMA surplus lines clearinghouse. Policies with effective dates or endorsements before that date will continue to be filed with the South Dakota Insurance Department until renewal.
7. Every insurance contract procured and delivered as a surplus lines coverage must be initialed by or bear the name of the surplus lines broker who procured it and have stamped upon it, in ten point or larger, boldface type, the following:

THIS INSURANCE CONTRACT IS ISSUED BY A NON-ADMITTED INSURER WHICH IS NOT LICENSED BY NOR UNDER THE JURISDICTION OF THE SOUTH DAKOTA INSURANCE DIRECTOR.

8. The South Dakota DOI issued Bulletin 13-04 in 2014, which provides guidance on rebating, fees and commissions. Rebating, negotiating commissions with consumers, charging fees not specified in the insurance product and collecting consulting fees and commissions on the same product are specifically prohibited, including for surplus lines brokers.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
South Dakota	§58-32-44 refers to Title 10 (Taxation)	2.5% payable by broker
	§10-44-2(3)	3% for fire insurance (annually, except if more than \$5,000 of surplus lines premium tax, then quarterly)
	§10-44-9	

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
South Dakota	§58-32-47	2.5% (within 30 days)
	§58-32-50	

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
South Dakota	No.	----	<p>§ 58-24-68</p> <p>Varies from NRRRA. The term “exempt commercial policyholder” means any person who applies for or procures any kind of property casualty insurance, except title or workers’ compensation insurance, through a risk manager, and meets at least two of the following qualifications.</p> <p>(1) purchased the insurance with aggregate premiums in the sum of at least \$100,000 during the most recent calendar year;</p> <p>(2) minimum \$10,000,000 net worth as reported in most recent financial statement, reviewed or audited by an independent certified public accountant;</p> <p>(3) minimum \$10,000,000 annual net revenues or net sales as reported in most recent financial statement, reviewed or audited by an independent certified public accountant;</p>

(4) minimum 100 full-time employees, either individually or, if the policyholder is a member of an affiliated group, collectively with all members of the affiliated group;

(5) if a nonprofit organization, minimum \$2,500,000 annual operating budget for most recent calendar or fiscal year, whichever applies;

(6) if a public entity, minimum \$10,000,000 operating budget for most recent calendar or fiscal year, whichever applies; or

(7) if a municipality, minimum 20,000 population.

From Appendix D: Surplus Lines Legislative Update 2014

SOUTH DAKOTA

The South Dakota Division of Insurance issued **Bulletin 13-04**, which provides guidance on rebating, fees and commissions. Rebating, negotiating commissions with consumers, charging fees not specified in the insurance product and collecting consulting fees and commissions on the same product are specifically prohibited, including for surplus lines brokers.



2015 Excess and Surplus Lines Laws: Tennessee

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

TENNESSEE

General Information:

1. Tennessee **does** maintain a list of foreign eligible surplus lines insurers (see Other Comments section #1).
2. Tennessee **does not** have a Surplus Lines Association.
3. Tennessee **does not** have an Export List.
4. Tennessee **does** have an industrial insured exemption (see Appendix C) and has also implemented the NRRRA exempt commercial purchaser exemption (§56-14-102(8)).
5. **Surplus lines tax:** 5%.

Eligibility and Filing Requirements (Alien Insurers Only):

Alien surplus lines insurers are ineligible in Tennessee unless listed by the NAIC International Insurers Department.

Eligibility and Filing Requirements (Foreign Insurers Only):

1. **Annual Statement/Report** (late or incomplete filings subject to a penalty of \$100 per day).
2. **Filing or Other Renewal Fee:** \$675 application fee (foreign); \$440 upon licensure – letter of notification of eligibility (foreign); \$515 annual statement (foreign)
3. **Report of Examination.**
4. **Quarterly Financial Statements:** on request.

5. **Capital and Surplus:** \$15,000,000 except where commissioner makes an affirmative decision.
6. **Actuarial Opinion** (must be filed electronically with the NAIC).
7. **Certificate of Compliance** issued by domiciliary state.

Types of Insurance Exempted from Authorized Insurer Regulation:

1. Transactions in Tennessee involving policies lawfully solicited, written and delivered outside of Tennessee covering only subjects of insurance not resident, located or expressly to be performed in Tennessee at the time of issuance or covering property in the course of transportation by land, air or water, to, from or through Tennessee and including any preparation or storage incidental thereto, and which transactions are subsequent to the issuance of such policies.
2. Contracts of insurance issued to an industrial insured.
3. Agents/Industrial Insureds are liable for premium and/or surplus lines tax for 1 and 2 above.

Other Comments or Requirements:

1. The eligibility list is located at: www.tn.gov/insurance/surpluslinescompanyRes.shtml.
2. A \$15 fee is imposed for serving process on the Commissioner of Insurance in his capacity as agent of record for an insurance company.
3. Broker must also have a non-resident P&C license in Tennessee and pay a \$60 fee.

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4. The following kinds of insurance are not eligible for surplus lines placements in Tennessee:
 - Primary personal auto;
 - Surety; and
 - Workers' compensation, except for excess workers' compensation.
 5. The continuing eligibility review information for foreign surplus lines companies is also available at the following website: www.tn.gov/insurance/surpluslinescompanyRes.shtml.
 6. Every new or renewed insurance contract certificate, cover note or other confirmation of insurance procured and delivered as a surplus lines coverage must bear the name and address of the writing agent and shall have stamped, affixed or printed upon it the following:

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a surplus line coverage pursuant to the Tennessee insurance statutes.

Such document must show the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and premium taxes to be collected from the insured, and the name and address of the insured and insurer. If the direct risk is assumed by more than 1 insurer, the document must state the name and address and proportion of the entire direct risk assumed by each insurer.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Tennessee	§56-14-113 §56-4-206	5% on gross premiums (less return premiums where the insurance covers an insured where the home state is Tennessee).

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Tennessee	----	----

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Tennessee	1) Insurance procured through full-time insurance manager or buyer;	§56-2-105(7)	§ 56-14-102
	2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and	§56-13-102(12)	Same as NRRA.
	3) Minimum 25 full-time employees.		

From Appendix D: Surplus Lines Legislative Update 2014**TENNESSEE**

House Bill 805/Senate Bill 356 sunsets the state's participation in SLIMPACT. The bill was enacted on April 4, 2014.



2015 Excess and Surplus Lines Laws: Texas

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

TEXAS

General Information:

1. Texas **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Texas **does** have a Surplus Lines Association and a Stamping Office (see Other Comments section #8).
3. Texas **does not** have an Export List.
4. Texas **does not** have an industrial insured exemption but adopted legislation in 2013 which aligns the Exempt Commercial Purchaser definition of the NRRA.
5. **Surplus lines tax:** 4.85% (+ stamping fee of 0.06%), payable by broker (TX DOI imposes assessments/enforcement actions for late filings).
6. Texas **has not** affiliated with any existing compact but has adopted legislation allowing it to keep 100% of surplus line premium tax where Texas is the home state (SB 1, Article 18).
4. New and renewal policies and any modifications made with an effective date prior to July 21, 2011, remain subject to the laws and regulations of each state as of the policy effective date.
5. New and renewal policies and any modifications made with an effective date on or after July 21, 2011, are only subject to the laws and regulations of the home state of the insured.
6. The NRRA provisions should be applied to multi-year and continuous-until-cancelled policies on the policy's first anniversary date on or after July 21, 2011.
7. Only the home state of an insured can require premium tax on a multi-state policy; however, states may join an agreement or compact to allocate the taxes among the various states afforded coverage under the policy.

Eligibility and Filing Requirements (Alien Insurers Only):

(For Alien Insurers Not on NAIC Quarterly List but grandfathered under new law effective 6/14/13)

Eligibility and Filing Requirements (All Insurers):

1. The provisions of the NRRA are effective July 21, 2011.
2. The placement of nonadmitted insurance is solely subject to the statutory and regulatory requirements of the insured's home state.
3. Nonadmitted insurance includes both surplus lines and independently procured insurance but does not include unauthorized insurance transactions by a non-licensed insurer that may be subject to regulatory actions and taxation by a state.
1. **Annual Report:** expressed in US Dollars.
2. **Certificate of Authority:** must be certified and indicate the kind and classes of business the company is entitled to write.
3. **List of Texas Surplus Lines Agents.**
4. **Three Year Business Plan:** using Form FIN 424.
5. **Biographical Affidavits:** (current within 3 years) for each officer, director and management of the insurer.

6. **Trust Agreement and Current Statement of Account.**
7. **Premium Report.**
8. **Actuarial Opinion:** due August 1.

Eligibility and Filing Requirements (Foreign Insurers Only):

1. **Certificate of Authority or License:** certified copy from insurer's state of domicile.
2. **Financial Statements:** The Texas DOI may review statements filed with the NAIC and in accordance with NAIC's guidelines.
3. **Lines of Business:** Anticipated to be written in Texas.

Additional Guidelines:

1. Texas Insurance Code, Chapter 229, gives the Comptroller the authority to join in a tax compact or other agreement. If the Comptroller decides to join in such an agreement, the industry will be notified in order to prepare for any necessary reporting and filing changes.
2. The NRRRA does not preempt any state law, rule or regulation that applies to the placement of workers' compensation or excess insurance for self-funded workers' compensation plans.

Types of Insurance Exempted from Surplus Lines Regulation:

None. (see Other Comments section #3 below).

Other Comments or Requirements:

1. Texas eligibility list available at <http://www.tdi.texas.gov> or at Texas Stamping Office website at <http://www.slsot.org>.
2. Onus is on broker to ascertain financial stability of insurer.
3. Texas Insurance Code (Chapter 225) provides tax exemption for premiums on risks or exposures which are properly allocated to federal waters, international waters or under jurisdiction of a foreign government. Risks located in Texas waters are taxable under state law. Tax exemption does not pre-empt the reporting of the surplus lines policy to the Surplus Lines Stamping Office of Texas, unless 100% of the exposure is tax-exempt or located in other state(s).

4. If a non-resident broker license is being sought by a corporation or partnership, at least one officer or director must also obtain an individual surplus lines license to receive the corporate license for the agency or partnership. If there are any other officers, directors, partners or employees in the agency that will be doing the acts of a surplus lines agent, they will be required to have an individual surplus lines license as well. Applicant must also have either an underlying General Lines P&C Agent license or an MGA license in Texas. SB697 adopted in the 83rd Legislative session does not require an underlying license for certain non-resident surplus lines agents who meet specific criteria outlined in Texas Insurance Code section 981.203(a-1).
5. All insurance companies, including surplus lines insurers, are required to promptly refund to the insured any unearned premium for a policy.
6. Rates charged by all insurers, including surplus lines insurers, must be "just, fair, reasonable, adequate, not confiscatory and not excessive for the risks to which they apply, and not unfairly discriminatory."
7. Texas no longer requires a surety bond or other proof of financial responsibility for licensure of surplus lines agents.
8. Texas Surplus Lines Association
Website: www.slsot.org/.
Contact: Jean Patterson, Executive Director

Texas Stamping Office
Website: www.tsla.org.
Contact: Executive Director
9. In 2009, Texas created an unauthorized insurance guaranty fund to help pay the claims of unauthorized insurers. Funds will be derived from fines and penalties imposed on unlicensed insurance entities and licensed entities that are doing insurance business in Texas without a license.
10. The Texas legislature enacted legislation in 2011 which made significant reforms to the operation of the Texas Windstorm Insurance Association. It affects surplus lines insurers in that it redefines the types of policies subject to premium allocation reporting and potential surcharging for the funding of Class 2 public securities. It specifies that only fire and allied lines, farm and ranch owners, residential property, private passenger automobile liability

and physical damage, commercial automobile liability and physical damage, and the property portion of commercial multi-peril insurance policies are subject to surcharging.

11. The Texas Legislature enacted Legislation in 2013 which aligns state law to the NRRRA requirements.
12. A policy issued by an eligible surplus lines insurer or a certificate of insurance issued by the surplus lines agent must contain a provision stating and designating the Person to whom the commissioner is to mail process. The plaintiff must supply this address in any citation served under this section.

A surplus lines document must state, in 11-point type, the following:

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as surplus line coverage under the Texas insurance statutes. The Texas Department of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and the insurer is not a member of the property and casualty insurance guaranty association created under Chapter 462, Insurance Code. Chapter 225, Insurance Code, requires payment of a (insert appropriate tax rate) percent tax on gross premium.

A surplus lines document must show:

- the description and location of the subject of the insurance;
- the coverage, conditions, and term of the insurance;
- the premium and rate charged, and premium taxes to be collected from the insured;
- the name and address of:
 - the insured;
 - the insurer; and
 - the insurance agent who obtained the surplus line coverage; and

- if the direct risk is assumed by more than one insurer:
 - the name and address of each insurer; and
 - the proportion of the entire direct risk assumed by each insurer.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Texas	Ins. § 225.004	4.85% (+ stamping fee of .06%)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Texas	§226.053(a)	4.85% (annually)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Texas	No	----	§ 981.0051, § 981.005 Same as NRRRA.

From Appendix D: Surplus Lines Legislative Update 2014**TEXAS**

The Texas Department of Insurance (TDI) issued a Bulletin to all authorized and eligible insurers doing business in Texas regarding the annual policy count data call. The Stamping Office of Texas will assist or report on behalf of eligible insurers if needed.



2015 Excess and Surplus Lines Laws: U.S. Virgin Islands

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

U.S. VIRGIN ISLANDS

General Information:

1. The U.S. Virgin Islands **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. The U.S. Virgin Islands **does not** have a Surplus Lines Association.
3. The U.S. Virgin Islands **does not** have an Export List.
4. USVA **does not** have an industrial insured exemption but does recognize the NRRRA exempt commercial purchaser exemption as of 7/21/2011, although it is not yet codified.
5. **Surplus lines tax:** 5% of quarterly gross premiums less returns, payable by licensed surplus lines broker on or before the first day of February, May, August and November of each year.

Eligibility and Filing Requirements (All Insurers):

1. **Premium report**
2. **Annual renewal fee:** \$350
3. **Annual report**
4. **Certificate of Authority:** Current

Note: The NRRRA restricts the eligibility requirements a state may impose on 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.

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.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Ocean marine and foreign trade insurance.
2. Insurance on subjects located, resident, or to be performed wholly outside of the U.S. Virgin Islands, or on vehicles or aircraft owned and principally garaged outside of the U.S. Virgin Islands.
3. Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of the aircraft, or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of the aircraft.

Other Comments or Requirements:

1. U.S. Virgin Islands eligibility list available at cheryl.nicholls@lgo-vi.gov.
2. Agents or brokers placing exempted coverages above are required to maintain a full and true record, for not less than five years, of each such coverage as required for surplus lines insurance. The record must be kept available in the U.S. Virgin Islands for the examination of the Commissioner of Insurance.
3. Surplus lines brokers must file a quarterly statement with the Commissioner on or before the first day of February, May, August, and November of each year.
4. Although certain types of insurance are exempted from surplus lines regulation, the taxes (5%) on the premiums collected on the portion of risks located in the U.S. Virgin Islands must be remitted to the Commissioner of Insurance.

5. Within thirty (30) days after the procuring of any surplus lines insurance, the surplus lines broker must execute and shall file with the Commissioner a written report, which shall include: the name and address of the insured; the identity of the insurer or insurers; a description of the subject and location of the risk; the amount of premium charged for the insurance; and such other pertinent information as the Commissioner may reasonably require.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
U.S. Virgin Islands	T.22 §662(a) T.22 §603(b)	5% (quarterly)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
U.S. Virgin Islands	§603(b)	5% (quarterly)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
U.S. Virgin Islands	No.	----	Not codified.



2015 Excess and Surplus Lines Laws: Utah

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

UTAH

General Information:

1. Utah **maintains** a list of eligible surplus lines insurers (see Other Comments section #1).
2. Utah **does** have a Surplus Lines Association (see Other Comments section #4).
3. Utah **does** have an Export List (see Other Comments section #1).
4. Utah **does** have an industrial insured exemption applicable for captive insurers only (see Appendix C). Utah does not have any statutory exempt commercial purchaser provisions but does recognize the NRRRA exempt purchaser exemption as of 7/21/2011.
5. **Surplus lines tax:** 4.25% (the insurer, all brokers involved in the transaction, and the policyholder are jointly and severally liable for payment). Also, stamping office fee of 0.15%; not applicable to ocean marine insurance.
6. Utah **has** adopted **NIMA** (HB 316).

Eligibility and Filing Requirements (All Insurers):

1. **Renewal fee:** \$575 due February 15 with invoice.
2. Utah does not incorporate any NRRRA insurer eligibility provisions, but current law requires unauthorized insurer to be "in substantial compliance with the solvency standards in Chapter 17, Part 6, Risk-Based Capital, or maintain capital and surplus of at least \$15,000,000, whichever is greater." §31A-15-103(6) (e). Therefore, under the NRRRA, the NRRRA eligibility standards apply in Utah as of July 21, 2011.

Eligibility and Filing Requirements (Alien Insurers Only):

As of July 21, 2011, Utah cannot prohibit placement of surplus lines insurance with a nonadmitted insurer domiciled outside the U.S. if the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

Eligibility and Filing Requirements (Foreign Insurers Only):

A broker may place insurance with a nonadmitted insurer domiciled in a U.S. jurisdiction if:

- The insurer is authorized to write the type of insurance in its domiciliary jurisdiction; and
- The insurer has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:
 - The minimum capital and surplus requirements under the law of Tennessee; or
 - \$15,000,000

The insurance commissioner may waive the minimum capital and surplus requirements above if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million.

Types of Insurance Exempted from Surplus Lines Regulation:

Ocean marine insurance.

Other Comments or Requirements:

1. Utah eligibility and export lists available at www.insurance.utah.gov/.
2. For alien insurers to retain eligibility, the company needs only continue its NAIC listing, file an Annual Report, and pay a \$250 Renewal Fee, and provide other information required in the annual review packet.
3. Applicant may be required to submit quarterly statements, changes in directors and officers, and updated accounting or financial information during the pendency of the application.
4. Utah Surplus Lines Association
Contact: Sylvia Bruno
Phone: 801-944-0114
Email: sbruno@slaut.org
5. A policy issued must include a description of the subject of the insurance and indicate the coverage, conditions, and term of the insurance, the premium charged and premium taxes to be collected from the policyholder, and the name and address of the policyholder and insurer. If the direct risk is assumed by more than one insurer, the policy must state the names and addresses of all insurers and the portion of the entire direct risk each has assumed. All policies issued under the authority of this section must have attached or affixed to the policy the following statement: **The insurer issuing this policy does not hold a certificate of authority to do business in this state and thus is not fully subject to regulation by the Utah insurance commissioner. This policy receives no protection from any of the guaranty associations created under Title 31A, Chapter 28.**
6. The Utah Legislature in 2014 enacted legislation in 2014 requiring surplus lines insurers to initiate an audit within six months of the expiration of a policy period. It further specifies that a surplus lines insurer may not count as earned premium an amount in excess of 50% of the initial premium until the earlier of: (i) the completion of an audit; or (ii) the term for which the auditable policy was written has expired and the time to conduct an audit has passed.

Further, if after an audit is conducted, the actual exposure is less than the estimated exposure, the insured is entitled to a refund of initial premium represented by the reduction of exposure.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Utah	R 590-157-5 §31A-3-301 §3 1A-1 5-103	4.25% (+ 0.15% stamping office fee) (not ocean marine insurance) (due 25th day of the following month closing the quarter)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Utah	§31A-15-104 §31A-3-301	4.25% (within 60 days) (excluding ocean marine, insurance premiums paid by institutions within the state system of higher education, and annuities)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Utah	1) Insurance procured through full-time risk manager or insurance manager, or regularly and continuously qualified insurance consultant; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees.	§31A-37-102(16)	Rule R590-171-3, Rule R590-171-6. Same as NRRA.

From Appendix D: Surplus Lines Legislative Update 2014

UTAH

House Bill 129 requires surplus lines insurers to initiate an audit within six months of the expiration of a policy period. It further specifies that a surplus lines insurer may not count as earned premium an amount in excess of 50% of the initial premium until the earlier of: (i) the completion of an audit; or (ii) the term for which the auditable policy was written has expired and the time to conduct an audit has passed. Further, if after an audit is conducted, the actual exposure is less than the estimated exposure, the insured is entitled to a refund of initial premium represented by the reduction of exposure. **This bill was enacted and became law on March 31, 2014.**



2015 Excess and Surplus Lines Laws: Vermont

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

VERMONT

General Information:

1. Vermont **does not** maintain a list of eligible surplus lines insurers.
2. Vermont **does not** have a Surplus Lines Association.
3. Vermont **does not** have an Export List.
4. Vermont **does** have an industrial insured exemption (see Appendix C) which will remain in effect. Vermont's new statute is silent on the definition of exempt commercial purchasers but the NRRRA exempt commercial purchaser exemption is recognized in Vermont unless or until SLIMPACT adopts rules.
5. **Surplus lines tax:** 3%, paid quarterly by broker.
6. Vermont **has** adopted **SLIMPACT** (SB 36).

Eligibility and Filing Requirements (All Insurers):

NRRRA restricts the eligibility requirements a state may impose on nonadmitted insurers. See 15 U.S.C. § 8204. For nonadmitted insurers domiciled in a U.S. jurisdiction, 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.

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.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Insurance on property or operations of aircraft or railroads engaged in transportation in interstate and foreign commerce.
2. Insurance on vessels, crafts, or hulls, cargoes, marine builder's risks, marine protection and indemnity or other risks including strikes and war risks commonly insured under ocean or wet marine forms of policy.
3. Transactions involving wet marine and transportation insurance covering property in the course of transportation by land, air, or water, to, from or through Vermont and including any preparation or storage incidental thereto.
4. Industrial Insurance.

Other Comments or Requirements:

1. Vermont Insurance Department Bulletin 134 (November 8, 2001) clarifies the Department's policy on whether surplus lines liability carriers must provide coverage for punitive as well as compensatory damages. The Department allows surplus lines carriers to exclude punitive damages from surplus lines policies because that encourages the development of the surplus lines insurance market and the coverage of risks that would not otherwise be covered.
2. Each surplus lines broker through whom a surplus lines insurance coverage is procured shall endorse on the outside of the policy and on any confirmation of the insurance, his or her name, address and license number, and the name and address of the producer, if any, through whom the business originated. Where such coverage is placed with an eligible surplus lines insurer there shall be stamped

or written conspicuously in no smaller than 10 point boldface type of a contrasting color upon the first page of the policy and the confirmation of insurance if any:

The company issuing this policy has not been licensed by the state of Vermont and the rates charged have not been approved by the commissioner of insurance. Any default on the part of the insurer is not covered by the Vermont Insurance Guaranty Association.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Vermont	T.8 §5035	3% (quarterly)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Vermont	§5036(d)	3% (annually)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Vermont	1) Insurance procured through full-time insurance manager or buyer; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees.	T.8 §3368(a)(6) T.8 §6001(8)	T.8 § 5024; Definition not codified. However, Bulletin 163 references the federal definition as provided in 15 U.S.C. § 8206(5).



2015 Excess and Surplus Lines Laws: Virginia

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

VIRGINIA

General Information:

1. Virginia **maintains** a list of eligible foreign surplus lines insurers (see Other Comments section #1).
2. Virginia **does** have a Surplus Lines Association (see Other Comments section #7).
3. Virginia **does not** have an Export List.
4. Virginia **does** have an industrial insured exemption (see Appendix C) that will remain in effect. As of 7/21/2011, the NRRRA exempt commercial purchaser exemption is also effective, although it is not yet codified.
5. **Surplus lines tax:** 2.25%, (except workers' compensation) payable by broker.
6. Virginia **has not** affiliated with any existing compact (HB 2286) Effective: July 1, 2011. Virginia requires every licensed surplus lines broker or person required to be licensed as a surplus lines broker to pay the Insurance Premiums License Tax on each policy of insurance procured by him during the preceding calendar year with an insurer not licensed to transact insurance business in Virginia. For policies effective on or after July 1, 2011, such payments are based on the direct gross premium income derived from policies for insureds whose home state is Virginia. See Va. Code §38.2-4809 for more information.

Eligibility and Filing Requirements (Alien Insurers Only):

An alien insurer is deemed approved by the Commission if such insurer is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC. (§38.2-4811D).

Eligibility and Filing Requirements (Foreign Insurers Only):

1. Annual Statement/Quarterly Statement: due no later than March 1 (unless the insurer's state of domicile has established a later filing date) and/or one month and fifteen days after the end of the latest quarter showing a minimum of \$15 million in capital and surplus. If filed with the NAIC, then a hard copy is not required.
2. Certificate of Compliance.
3. Virginia Plan of Operation (for initial application). Description of specific plan of operation in Virginia, including a list of surplus lines brokers.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Insurance on vessels or crafts, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies, as distinguished from inland marine insurance policies. However, other provisions of Title 38.2 of the Code of Virginia may apply.
2. Insurance of the rolling stock and operating properties of railroads used in interstate commerce or of any liability or other risks incidental to the ownership, maintenance or operation of such railroads. However, other provisions of Title 38.2 of the Code of Virginia may apply.
3. Industrial Insurance.

Other Comments or Requirements:

1. Current list of foreign approved insurers available at Virginia Insurance Department's website at www.scc.virginia.gov/boi/ (follow procedures for the list of surplus lines carriers; click on "Consumer Home";

select "Company Lookup," select "Company", select "Surplus Lines Carrier." A complete list of foreign surplus lines carriers approved in Virginia is listed.

2. Exempted classes of insurance subject to premium taxes must be placed by a Virginia licensed surplus lines broker.
3. Broker must have a surplus lines broker license in home state and complete an application.
4. Virginia allows a surplus lines carrier to sell ultralight aircraft insurance as defined by the Federal Aviation Administration. Ultralight aircraft owners are required by state financial responsibility laws to either carry a \$100,000 insurance policy or deposit \$50,000 with the State Treasury.
5. A notice in a form prescribed by the Commission must be given to the insured by the surplus lines broker procuring the policy or by any duly licensed property and casualty insurance agent placing surplus lines business with the surplus lines broker. The notice must contain, but not be limited to, statements that the policy is being procured from or has been placed with an insurer approved by the Commission for issuance of surplus lines insurance in this Commonwealth, but not licensed or regulated by the Commission and that there is no protection under the Virginia Property and Casualty Insurance Guaranty Association against financial loss to claimants or policyholders because of the insolvency of an unlicensed insurer. The notice must also set forth the name, license number and mailing address of the broker. The notice must be given prior to placement of the insurance. In the event coverage must be placed and become effective within twenty-four hours after referral of the business to the surplus lines broker, the notice may be given promptly following such a placement. In addition, a copy of the notice must be affixed to the policy.
6. As per Administrative Letter 2008-06, surplus lines insurers, risk retention groups not chartered in Virginia, and licensed insurers transacting the business of insurance with risk purchasing groups not domiciled in Virginia are only required to use Virginia automobile standard forms if the insurer, on behalf of its insured, files an SR-22 or FR-44 with the Virginia Department of Motor Vehicles in order to comply with Virginia's financial responsibility

laws. Consequently the Bureau of Insurance has withdrawn Administrative Letter 1995-4, which required surplus lines insurers to use the automobile standard forms without exception.

However, the following entities must always use Virginia automobile standard forms, and any additional provisions or coverages more favorable than those in the automobile standard forms used by these entities must be approved by the Bureau as set forth in § 38.2-2223 of the Code of Virginia:

- A risk retention group chartered in Virginia; or
 - A licensed insurer that transacts the Business of insurance with a risk purchasing group domiciled in Virginia.
7. The Virginia Surplus Lines Association is a private organization and not sanctioned by the State Corporation Commission. Contact information is as follows: Greg P. Provenzo, c/o Atlantic Specialty Lines, Inc., gregpov@atlanticspecial.com.
 8. Effective July 1, 2008, the Virginia legislature eliminated the due diligence requirement that surplus lines brokers attempt to procure insurance from a licensed insurer before he provides a surplus lines policy. An affidavit affirming that notice has been given to the insured that the insurance is not placed with a Virginia licensed insurer must still be filed within the Virginia State Corporation Commission within 30 days after the end of each quarter.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Virginia	§38.2-4809(A)(1) refers to Article 1, Title 58.1-2500 et seq. (Taxation) §58.1-2501(A)(1)	2.25% (except workers' compensation) (quarterly if premium tax liability is expected to exceed \$1,500)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Virginia	§38.2-1802(A)	----

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Virginia	<p>1) Insurance procured through full-time insurance manager or buyer or regularly and continuously retained licensed insurance consultant;</p> <p>2) Minimum \$100,000 aggregate annual premiums for insurance on all risks; (excluding life and annuity and accident and sickness);</p> <p>3) Minimum 25 full-time employees; and</p> <p>4) Minimum gross assets in excess of \$3 million or annual gross revenues in excess of \$5 million.</p>	§38.2-1039(D)(5)	Not codified. However, Administrative Letter 2011-4 indicates that the Virginia General Assembly enacted House Bill 2286, which amended various provisions of the Surplus Lines and Insurance Law chapter (§§ 38.2-4800 et seq.) in accordance with provisions of NRRA effective as of July 1, 2011.



2015 Excess and Surplus Lines Laws: Washington

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

WASHINGTON

General Information:

1. Washington **does not maintain** a list of eligible surplus lines insurers.
2. Washington **does** have a Surplus Lines Association (see Other Comments section #3).
3. Washington **does not** have an Export List.
4. Washington **does not** have an industrial insured but does recognize the NRRRA exempt commercial purchaser exemption (§ 48.15.010).
5. **Surplus lines tax:** 2%, payable by surplus lines broker, plus 0.10% stamping fee.
6. Washington has not affiliated with any existing compact (HB 1694). Washington has adopted enabling legislation, but has not entered into any tax sharing arrangement with other states. If Washington state is the home state of the insured, the tax is computed on the entire premium, without regard to whether the policy covers risks or exposures that are located in other states. The commissioner will issue additional guidance if and when Washington enters into a multi-state compact.

Eligibility and Filing Requirements (All Insurers):

Washington will not be imposing fees for eligibility. Insurers should submit annual and quarterly filings to the stamping office, the Surplus Line Association of Washington. Contact information and service of process should be sent to Washington DOI as well as the stamping office.

Eligibility and Filing Requirements (Alien Insurers Only):

Alien insurers must be on the Quarterly Listing of Alien Insurers maintained by NAIC. §48.15.090(1)(b).

Eligibility and Filing Requirements (Foreign Insurers Only):

Surplus lines brokers may not place coverage with a nonadmitted insurer unless, at the time of placement, the nonadmitted insurer:

- Is authorized to write such insurance in its domiciliary jurisdiction; and
- Possesses capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of Washington or \$15 million. § 48.15.090(1)(a)(i).

The commissioner may waive the minimum capital and surplus requirement for a nonadmitted insurer if he makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. § 48.15.090(1)(a)(ii). The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million. § 48.15.090(1)(a)(ii).

Types of Insurance Exempted from Surplus Lines Regulation:

1. Ocean marine and foreign trade insurances.
2. Insurance on subjects located, resident, or to be performed wholly outside of Washington or on vehicles or aircraft owned and principally garaged outside of Washington.

3. Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.
4. Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of the aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of the aircraft.

Other Comments or Requirements:

1. If alien is not on NAIC List, broker must be satisfied that insurer is financially sound.
2. Policy filings and surplus lines broker certificates must be filed with the Surplus Line Association within 60 days of procurement.
3. Contact information for the Surplus Line Association of Washington is as follows:

Robert R. Hope, Manager
 Surplus Line Association of Washington
 1710 One Union Square
 600 University Street
 Seattle, Washington 98101-1129
 Phone: (206) 682-3409
 Fax: (206) 623-3326
 Email: bob@surpluslines.org
4. Non-resident surplus line broker license may be issued: 1) if the laws of the state, province or domicile of the non-resident extend a similar privilege to residents of Washington; and 2) the non-resident must meet the same qualifications, other than residency, as any other person seeking to be licensed as a surplus line broker under RCW 48.15.

A non-resident surplus lines broker has all the same responsibilities as any other surplus lines broker and is subject to the commissioner's supervision and rules adopted under RCW 48.15.

5. Every insurance contract, including those evidenced by a binder, procured and delivered as a surplus lines coverage must have a conspicuous statement stamped upon its face, which must be initialed by or bear the name of the surplus lines broker who procured it, as follows:

This contract is registered and delivered as a surplus line coverage under the insurance code of the state of Washington, Title 48RCW. It is not protected by any Washington state guaranty association law.

6. Surplus lines brokers are no longer required to submit full copies of the policies when filing; but are required to submit the following documents with a certification form to Surplus Lines Association of WA:

- Policy declarations, certificate or covernote declarations
- Supplemental declarations
- Schedule of forms and endorsements
- Copies of service of suit endorsement.

If policy documents are not available within 60 days, broker should complete the certification form and file these policy documents upon receipt.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Washington	§48.14.020 §48.15.120	2% (+0.10% stamping fee) (annually by March 1).

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Washington State	----	----From Appendix C: Industrial Insurance – Exemptions by

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Washington	No	----	§ 48.15.010 Same as NRRA.



2015 Excess and Surplus Lines Laws: West Virginia

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

WEST VIRGINIA

General Information:

1. West Virginia **does maintain** a list of eligible surplus lines insurers (see Other Comments Section #1).
2. West Virginia **does** have a Surplus Lines Association.
3. West Virginia **does** have an Export List (see Other Comments section #1).
4. West Virginia **does** have an industrial insured exemption applicable to captive insurers only (see Appendix C) and has also adopted the NRRRA exempt commercial purchaser exemption (§ 33-12C-3(f)).
5. **Surplus lines tax:** 4.55%, collected and remitted to Commissioner by surplus lines licensee. The surplus lines tax is imposed on gross fees charged to the policyholder in addition to net premiums.
6. West Virginia **has not** affiliated with any existing compact (SB 435). Currently, West Virginia uses home state taxation.

Eligibility and Filing Requirements (All Insurers):

1. **Application.**
2. **Plan of Operation.**
3. **Requalification Fee:** \$100.

Eligibility and Filing Requirements (Alien Insurers Only):

1. **NAIC Listing.**
2. Current **Certificate of Authority** from the Insurance Regulatory Authority in jurisdiction of domicile.
3. Attestation of Filing of **IID Financial Format**.

4. Description of products to be sold in West Virginia (Form SL-2) and proposed business plan if amended or changed from the initial filing.

Eligibility and Filing Requirements (Foreign Insurers Only):

1. **Certificate of Authority** from the Insurance Regulatory Authority in state of domicile.
2. **Capital and Surplus** of no less than \$15,000,000.
3. **Annual Statement:** Signed with Juratpage.

Types of Insurance Exempted from Surplus Lines Regulation:

Transactions in West Virginia relative to a policy issued or to be issued outside West Virginia involving insurance on cargo vessels, their craft or hulls, their cargoes, marine builder's risks, marine protection and indemnity or other risks, including strikes and war risks, commonly insured under ocean or wet marine forms of policy.

Other Comments or Requirements:

1. West Virginia eligibility and export lists are available at www.wvinsurance.gov/.
2. Surplus lines licenses may procure insurance from unlicensed insurers if the business is not procurable from a licensed company.
3. Insurer must be solvent.
4. The surplus line broker may charge the prospective policyholder a fee for the cost of underwriting, issuing, processing, inspecting, servicing or auditing the policy for placement with the excess line insurer if:
 - The service is required by the excess line insurer.

- The service is actually provided by the surplus line licensee or the cost of the service is actually incurred by the surplus line licensee.
 - The provision or cost of the service is reasonable, documented and verifiable.
5. West Virginia essentially adopted the NAIC Nonadmitted Insurers Model Act effective 6/5/03. The legislation amended and reenacted the West Virginia Surplus Lines – Nonadmitted Insurance Act by substituting §§ 33-12C-1 through 33-12C-29 for the former §§ 33-12C-1 through 33-12C-15. The new provisions are significantly different from the prior law.
 6. Effective 1/1/05, the countersignature requirements of West Virginia Code § 33-12C-24 are no longer required.
 7. Inquiries may be directed to:
 - Financial Conditions Division
 - P.O.Box 50540
 - Charleston, WV 25305-0540
 - Phone: 304-558-2100
 - Fax: 304-558-1365
 - Email: wvtxsection@wvinsurance.gov
 8. The surplus lines licensee shall give the following consumer notice to every person applying for insurance with a nonadmitted insurer. The notice shall be printed in sixteen-point type on a separate document affixed to the application. The applicant shall sign and date a copy of the notice to acknowledge receiving it. The surplus lines licensee shall maintain the signed notice in its file for a period of ten years from expiration of the policy. The surplus lines licensee shall tender a copy of the signed notice to the insured at the time of delivery of each policy the licensee transacts with a nonadmitted insurer. The copy shall be a separate document affixed to the policy.

Notice: 1. An insurer that is not licensed in this state is issuing the insurance policy that you have applied to purchase. These companies are called "nonadmitted" or "surplus lines" insurers. 2. The insurer is not subject to the financial solvency regulation and enforcement that applies to licensed insurers in this state. 3. These insurers generally do not participate in insurance guaranty funds created by state law. These guaranty funds will not pay your claims

or protect your assets if the insurer becomes insolvent and is unable to make payments as promised. 4. Some states maintain lists of approved or eligible surplus lines insurers and surplus lines brokers may use only insurers on the lists. Some states issue orders that particular surplus lines insurers cannot be used. 5. For additional information about the above matters and about the insurer, you should ask questions of your insurance agent or surplus lines licensee. You may also contact your insurance commission consumer help line.

9. No contract of insurance placed by a surplus lines licensee in West Virginia shall be binding upon the insured and no premium or fee charged shall be due and payable until the surplus lines licensee shall have notified the insured in writing, in a form acceptable to the commissioner, a copy of which shall be maintained by the licensee with the records of the contract and available for possible examination, that:
 - The insurer with which the licensee places the insurance is not licensed by this state and is not subject to its supervision; and
 - In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.
 - Nothing herein contained shall nullify any agreement by any insurer to provide insurance.
10. Eligibility, filing requirements and attestation forms can be found on the WVDOI website at www.wvinsurance.gov/ by clicking on Insurance Company Information, then click "Forms."
11. 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.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
West Virginia	§33-12C-7	4.55% (quarterly)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
West Virginia	----	----

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
West Virginia	1) Insurance procured through full-time insurance manager or buyer; 2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and 3) Minimum 25 full-time employees.	§33-31-1(11)	§ 33-12C-3(f) Same as NRRA.



2015 Excess and Surplus Lines Laws: Wisconsin

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

WISCONSIN

General Information:

1. Wisconsin **does not** maintain a list of eligible surplus lines insurers (see Other Comments section #2).
2. Wisconsin **does not** have a Surplus Lines Association.
3. Wisconsin **does not** have an Export List.
4. Wisconsin **does not** have an industrial insured exemption but has adopted the NRRRA exempt commercial purchaser exemption.
5. **Surplus lines tax:** 3% payment is the joint responsibility of the broker and policyholder.
6. Wisconsin **has not** affiliated with any existing compact but has taken legislative action to comply with NRRRA.

Eligibility and Filing Requirements (Alien Insurers Only):

Wisconsin may not prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted alien insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

Eligibility and Filing Requirements (Foreign Insurers Only):

Wisconsin may not impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a U.S. jurisdiction, except:

- Wisconsin may require that the insurer be authorized to write the type of insurance in its domiciliary jurisdiction; and

- Wisconsin may require that the insurer have capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:
 - The minimum capital and surplus requirements under the law of Wisconsin; or
 - \$15,000,000

The insurance commissioner may waive the minimum capital and surplus requirements above if the commissioner makes an affirmative finding of acceptability after considering: quality of management, capital and surplus of a parent company, company underwriting profit and investment trends, market availability, and company record and reputation within the industry. The commissioner may not make a finding of acceptability if the insurer's capital and surplus is under \$4.5 million.

Types of Insurance Exempted from Surplus Lines Regulation:

Wisconsin lists types of insurance that cannot be written by unlicensed insurers. Such prohibited coverages include title, mortgage guaranty insurance, or workers' compensation insurance.

Other Comments or Requirements:

1. Further information at http://oci.wi.gov/pub_list/pi-026.html.
2. Section 618.41 (6)(d), Wis. Stat., states that the Commissioner may issue lists of unauthorized nondomestic insurers (surplus lines carriers) he or she believes to be reliable and solid. In 2004, the Wisconsin Insurance Commissioner determined that he could no longer provide the lists contemplated

in s. 618.41 (6)(d), Wis. Stat., and would no longer evaluate financial statements submitted to the Commissioner's office for that purpose.

3. Every new or renewal insurance policy procured and delivered in Wisconsin shall bear the name and address of the insurance agent or broker who procured it and, except for ocean marine insurance, shall have stamped or affixed upon it the following:

This insurance contract is with an insurer which has not obtained a certificate of authority to transact regular insurance business in the state of Wisconsin, and is issued and delivered as a surplus line coverage pursuant to s. 618.41 of the Wisconsin Statutes. Section 618.43(1), Wisconsin Statutes, requires payment by the policyholder of 3% tax on gross premium.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Wisconsin	§618.43 Ins. Reg. 6.17	3% (annual by March 1).

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Wisconsin	§618.42 §618.43(1)(a)	3% (within 60 days)

From Appendix C: Industrial Insurance – Exemptions by State

State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Wisconsin	No	----	Not codified.



2015 Excess and Surplus Lines Laws: Wyoming

By John P. Dearie, Jr. (Editor), John N. Emmanuel, Robert A. Romano, and Paige D. Waters

WYOMING

General Information:

1. Wyoming **does not** maintain a list of eligible surplus lines insurers.
2. Wyoming **does not** have a Surplus Lines Association.
3. Wyoming **does** have an Export List (see Other Comments section #1).
4. Wyoming **does** have an industrial insured exemption (see Appendix C) which will remain in effect. As of 7/21/2011, the NRRRA exempt commercial purchaser exemption is also effective.
5. **Surplus lines tax:** 3%, payable by broker.
6. Wyoming **has** adopted **NIMA** (HB 242).

Eligibility and Filing Requirements (All Insurers):

Wyoming does not require foreign or alien insurers to provide financial information or remit an application or renewing fee but defers to the NRRRA for minimum eligibility standards for both foreign and alien surplus lines insurers.

Eligibility and Filing Requirements (foreign insurers only):

W.S. § 26-14-107(f) A nonadmitted insurer eligible to place surplus lines insurance or independently procured insurance shall:

- (i) Be authorized to write the kind of insurance in its domiciliary jurisdiction;
- (ii) Have established satisfactory evidence of good repute and financial integrity; and

(iii) Be qualified under one (1) of the following subparagraphs:

- a) Have capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:
 - I. The minimum capital and surplus requirements under the law of this state; or
 - II. Fifteen million dollars (\$15,000,000.00).
- b) The requirements of subparagraph (A) of this paragraph may be satisfied by an insurer's possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability and company record and reputation within the industry. In no event shall the commissioner make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars (\$4,500,000).

Eligibility and Filing Requirements (alien insurers only):

For an insurer not domiciled in the United States or its territories, the insurer is listed on the quarterly listing of alien insurers maintained by the NAIC International insurers department.

Types of Insurance Exempted from Surplus Lines Regulation:

1. Wet marine and transportation insurance.
2. Insurance on subjects located, resident, or to be performed wholly outside of Wyoming or on vehicles or aircraft owned and principally garaged outside Wyoming.
3. Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.
4. Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of the aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of the aircraft.

Other Comments or Requirements:

1. Insurance coverages available for export in Wyoming include: liquor dealers liability, lawyers professional liability, accountants professional liability, architects and engineers professional liability, and pension and welfare fund fiduciary responsibility insurance.
2. Broker must ascertain financial condition and compliance with trust requirements before placing insurance with that insurer.
3. NAIC listing makes alien company automatically eligible.
4. For more information, contact Wyoming Insurance Department's website at <http://sites.google.com/a/wyo.gov/doi/home>.
5. The Wyoming DOI issued a Memorandum in 2013 stating that all single-state policies issued or renewed on or after April 1, 2013, and any subsequent endorsements to those policies, shall be filed with the NIMA surplus lines clearinghouse. Surplus lines filers were to begin filing transactions with the clearinghouse on April 1. Single-state policies with an effective date before April 1, or endorsements on those policies, will continue to be filed with the Wyoming Insurance Department until renewal.

6. Any insurance contract procured and delivered as a surplus lines coverage pursuant to this chapter shall have stamped or printed upon it, in at least ten (10) point bold type font, the name and address of the surplus line broker who procured the coverage, and the following:

This insurance contract is issued pursuant to the Wyoming Insurance Laws by an insurer neither licensed by nor under the jurisdiction of the Wyoming Insurance Department. In the event of insolvency of the surplus lines insurer, losses will not be paid by the Wyoming Insurance Guaranty Association.

From Appendix A: Surplus Lines Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Wyoming	§26-11-118	3% (annually)

From Appendix B: Direct Procurement Tax Laws by State

State	Statutory Citation To Insurance Code	Tax Rate Applied
Wyoming	§20-11-118 §26-11-124	3% (annually)

From Appendix C: Industrial Insurance – Exemptions by State

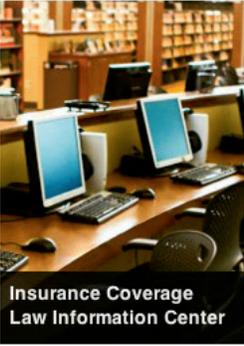
State	Industrial Insured Statutory Requirements	Statutory Reference To Insurance Code	Statutory Reference To Exempt Commercial Purchaser
Wyoming	<p>1) Insurance procured through full-time insurance manager or buyer, or regularly and continuously retained qualified insurance consultant;</p> <p>2) Minimum \$25,000 aggregate annual premiums for insurance on all risks; and</p> <p>3) Minimum 25 full-time employees.</p>	§26-12-101	<p>§ 26-11-104(c)</p> <p>Same as NRRRA.</p>

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