

# Wyoming Surplus Lines Insurance Frequently Asked Questions

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**1. Does Wyoming have an export list?**

**The following coverages have been open for export:**

- Accountants Professional Liability
- Architects & Engineers Professional Liability
- Lawyers Professional Liability
- Liquor Legal Liability
- Pension/Welfare Fund Fiduciary Liability and IRA & Keogh Plan E&O

*The diligent effort search is not required for those coverages listed above that have been open for export.*

**2. Are there any special restrictions that would prohibit export to the surplus lines market?**

W.S. § 26-11-104(a)(iii) The insurance shall not be exported for the purpose of securing advantages either as to:

- (A) A lower premium rate than would be accepted by an authorized insurer; or
- (B) Terms of the insurance contract.

**3. What are the diligent effort requirements that must be satisfied prior to placing coverage with a surplus lines insurer?**

Prior to placing coverage with a surplus lines insurer, the surplus lines broker must determine that the producer has conducted a diligent effort search to procure the full amount of insurance required from insurers admitted in Wyoming which are authorized to transact and actually writing that kind and class of insurance in this state. The amount of insurance exported shall only be the excess over the amount procurable from authorized insurers.

The Statement of Diligent Effort must be prepared by the producer and verified by the surplus lines broker. If the surplus lines broker is also the producer, the surplus lines broker is responsible for conducting the diligent effort search and preparing the Statement of Diligent Effort.

The Statement of Diligent Effort must be completed with the required information from three (3) insurers that are admitted in Wyoming. The form must show the full name of the admitted insurers. Abbreviating the company name or listing a company group name is not acceptable.

The Statement of Diligent Effort must be completed for each new surplus lines policy, when a policy renews, or when there is any material change to an existing policy.

The Statement of Diligent Effort shall be retained by the Surplus Lines Broker for a period of five years following termination of the contract and is subject to examination by the commissioner. This form is not sent to the Wyoming Insurance Department.

If the expiring coverage is placed with an admitted company and that company has offered renewal, or a quote is available from an admitted company, the coverage is not eligible for placement with a surplus lines insurer.

Wyoming admitted insurers and their authorized lines may be found using the Database Search at the Wyoming Insurance Department Website: <https://sites.google.com/a/wyo.gov/doi/database-search>

*Reference: W.S. § 26-11-104. Conditions for Export.*

#### **4. What are the eligibility requirements for an exempt commercial purchaser?**

W.S. § 26-11-104 (b) A surplus lines broker is not required to make a diligent effort search to determine whether the full amount or type of insurance can be obtained from admitted insurers when the broker is seeking to procure or place nonadmitted insurance for an exempt commercial purchaser provided:

(i) The broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(ii) The exempt commercial purchaser has subsequently requested in writing for the broker to procure or place such insurance from a nonadmitted insurer.

(c) For purposes of this section, the term "exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(i) The person employs or retains a **qualified risk manager** to negotiate insurance coverage;

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars (\$100,000.00) in the immediately preceding twelve (12) months;

(iii) The person meets at least one (1) of the following criteria:

(A) The person possesses a net worth in excess of twenty million dollars (\$20,000,000.00) as adjusted pursuant to paragraph (iv) of this subsection;

(B) The person generates annual revenues in excess of fifty million dollars (\$50,000,000.00) as adjusted pursuant to paragraph (iv) of this subsection;

(C) The person employs more than five hundred (500) full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand (1,000) employees in the aggregate;

(D) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars (\$30,000,000.00) as adjusted pursuant to paragraph (iv) of this subsection;

(E) The person is a municipality with a population in excess of fifty thousand (50,000) individuals.

(iv) Effective on January 1, 2015 and every five (5) years thereafter, the amounts in subparagraphs (A), (B) and (D) of paragraph (iii) of this subsection shall be adjusted to reflect the percentage change for such five (5) year period in the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor.

#### **5. What are the requirements a person must meet to be considered a Qualified Risk Manager?**

With respect to a policyholder of commercial insurance, a Qualified Risk Manager must meet the requirements set forth in the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"), Sec. 527(13) Qualified Risk Manager. The NRRA is posted on the Surplus Lines webpage under Surplus Lines Laws, Regulations and Memorandums.

#### **6. What are the eligibility requirements and exemptions for risk purchasing groups?**

A. Liability purchasing groups must register with the Wyoming Insurance Department pursuant to Chapter 36 of the Wyoming Insurance Code. A list of registered purchasing groups is available by contacting Mavis Earnshaw at [mavis.earnshaw@wyo.gov](mailto:mavis.earnshaw@wyo.gov).

- B. A liability purchasing group may not purchase insurance from an insurer not admitted in Wyoming unless the purchase is effected through a surplus lines broker licensed in this state. *Reference: W.S. § 26-36-110.*
- C. A liability purchasing group may procure and provide liability insurance for group members located in this state without regard to any requirement that a diligent effort be made to procure such coverage from admitted insurers. *Reference: W.S. § 26-36-108.*

**7. What are the eligibility requirements for nonadmitted insurers? Does Wyoming maintain a list of eligible 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.

*At this time, Wyoming does not maintain a list of eligible nonadmitted insurers.*

**National Association of Insurance Commissioners (NAIC) reference tools for company data may be accessed by clicking on the links posted under the Resources section of the department's Surplus Lines webpage.**

[NAIC – Domestic and Foreign Insurance Companies](#)

[NAIC - Quarterly Listing of Alien Insurers](#)

**8. What are the requirements for the Notice to Insured form and policy stamping language?**

**W.S. § 26-11-109. Endorsement of contract; duty to notify the insured.**

(a) 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."

(b) No contract of insurance placed by a surplus lines broker under this chapter shall be binding upon the insured and no premium charged shall be due and payable until the surplus lines broker shall have notified the insured in writing, in a form acceptable to the commissioner, a copy of which shall be maintained by the surplus lines broker with the records of the contract and available for possible examination, that:

(i) The insurer with which the surplus lines broker places the insurance is not licensed by this state and is not subject to its supervision; and

(ii) In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty association.

***A surplus lines broker is required to notify the insured in writing of the disclosures in W.S. § 26-11-109 (b). A copy of this notice must be in the insured's file that is maintained by the surplus lines broker. A contract of insurance placed by a surplus lines broker is not binding upon the insured and no premium charged is due and payable until the insured receives this notification. The notification can be a separate document or included in a quote, a proposal, a letter, or other similar document. The insured's signature acknowledging receipt is not required, however, producers and surplus lines brokers may desire acknowledgement. A suggested form is available at the Department website. The Notice to Insured form is not sent to the Wyoming Insurance Department. The notice to insured is in addition to the policy stamp requirements.***

**9. When should a nonadmitted insurance policy or endorsement be reported?**

Surplus lines brokers and those who independently procured nonadmitted insurance must report policy data to the SLAS Clearinghouse within forty-five (45) days of the effective date of the policy or endorsement.

**10. Are Surplus Lines Brokers required to file a quarterly Affidavit Report?**

All surplus lines brokers who transact business during the calendar quarter are required to submit the quarterly Affidavit Report electronically through the SLAS Clearinghouse. The quarterly Affidavit Report has replaced the Annual Report. The Affidavit Report is not required for reporting periods with no business reported through the SLAS Clearinghouse.

**11. Are electronic signatures acceptable on the Surplus Lines Transaction Report?**

The Surplus Lines Transaction Report may be signed electronically. All other surplus lines forms must contain original signatures.

**12. Does Wyoming allow courtesy or accommodation filings?**

Wyoming does not allow courtesy or accommodation filings. Surplus lines insurance must be procured through a surplus lines broker licensed in this state.

**13. Are there any restrictions on the placement of motor vehicle liability or physical damage coverages with surplus lines insurers?**

It is the Department's position that motor vehicle liability coverage must be placed with admitted insurance companies or in the automobile assigned risk plan and not with surplus lines insurers. However, motor vehicle liability coverage that has been declined by the assigned risk program would be eligible for placement with surplus lines insurers. In general, physical damage coverage should be placed in the admitted market with the company issuing the motor vehicle liability policy

Chapter 11 of the Wyoming Insurance Code which regulates surplus lines insurance does not prohibit motor vehicle liability coverage or physical damage coverage. However, Wyoming Insurance Department Regulations, Chapter 14 Cancellation and Nonrenewal of Automobile Liability Policies and certain laws which are regulated by the Department of Transportation do apply.

Title 31, Chapter 9 Motor Vehicle Safety Responsibility

W.S. 31-9-405 (a) As used in this act "liability policy" means an owner's or an operator's policy of liability insurance, certified as provided in W.S. 31-9-403 or 31-9-404 as proof of financial responsibility, and issued, except as otherwise provided in W.S. 31-9-404, by an insurance carrier authorized to transact business in this state, to or for the benefit of the person named as insured.

Title 26 Insurance Code

W.S. 26-1-102 (v) "Authorized" insurer means an insurer authorized by a subsisting certificate of authority issued by the commissioner to transact insurance in this state;

Also, Wyoming Insurance Department regulations, Chapter 14 Cancellation and Nonrenewal of Automobile Liability Policies, Section 6 Notice of Right Under Assigned Risk Plan states "When automobile liability coverages is either canceled or nonrenewed by an insurer, the insurer shall notify the policyholder of his possible eligibility for automobile insurance through the automobile assigned risk plan or Wyoming automobile insurance plan. The notification shall accompany or be included in the notice of cancellation or nonrenewal by these rules." *Please note that certain vehicle types are exempted from this notice requirement. Rules are available at the Wyoming Secretary of State's website: <https://rules.wyo.gov/>*

If you have any questions regarding motor vehicle or commercial vehicle insurance requirements, please contact the Wyoming Department of Transportation Driver Services at (307) 777-4800.

**14. Are there any Certificate of Insurance form requirements for surplus lines policies?**

Pursuant to W.S. § 26-13-125 (c) The forms used for a certificate of insurance for surplus lines policies issued pursuant to the nonadmitted insurance law, W.S. § 26-11-101 et seq., are not subject to the approval requirements of W.S. § 26-15-110. Certificates issued for surplus lines insurance policies shall use either:

- (i) A form approved for the policy by the insurer's home state; or
- (ii) A standard form used by the issuing insurer if there is no relevant form approved by the home state.

**15. Does Wyoming have a surplus lines association or stamping office?**

Wyoming does not have a surplus lines association or stamping office.

**16. What is the Wyoming nonadmitted insurance tax rate and SLAS Clearinghouse transaction fee?**

Wyoming nonadmitted insurance is taxed at the rate of three (3) percent on the gross premiums, less any return premiums. A SLAS Clearinghouse transaction fee of 0.175% is charged on the gross premiums, less any return premiums, for all transactions reported to the SLAS Clearinghouse. The Wyoming surplus lines insurance premium tax and SLAS Clearinghouse transaction fee should be listed on any applicable quotes, proposals, invoices and policy forms.

**17. What are the penalties and interest charges for late reporting and late tax payments?**

Any surplus lines broker or those who independently procure nonadmitted insurance, that fails to file a report in the form and within the time required, or to pay the premium tax due on or before the due date, may be fined up to \$25.00 per day for each day the report is delinquent and shall pay 9% interest on any delinquent tax due. There is no grace period. Ref: W.S. § 26-11-119

**18. What are the producer licensing requirements to be eligible to place coverage through a surplus lines broker?**

**W.S. § 26-11-115. Broker may accept and place business from agents.**

A licensed surplus line broker may accept and place surplus line business for any insurance agent licensed in this state for the kind of insurance involved and may compensate the agent therefor.

***The producer's licensing must be documented in the record of the surplus lines broker.***

**19. Who is considered the surplus lines broker and subject to licensing requirements?**

The surplus lines broker operates as an intermediary between a producer and a surplus lines insurance company. The producer is responsible for conducting the diligent search of the admitted markets prior to accessing the surplus lines market through a surplus lines broker. In this situation, the producer is not required to obtain a surplus lines broker license.

If a producer places coverage directly with the surplus lines insurer, the producer license is required to sell, solicit or negotiate insurance, which includes conducting the diligence search of admitted insurers, and the surplus lines broker license is required prior to transacting business with the surplus lines insurance company.

Licensing information is available at: <https://sites.google.com/a/wyo.gov/doi/licensing/special-licenses/surplus-lines>

**20. What is the licensing requirement for Surplus Lines Broker Firms to designate a Responsible Surplus Lines Broker?**

W.S. § 26-11-112(h) A business entity acting as a surplus lines broker is required to obtain a surplus lines broker license. In addition to the requirements for licensure set forth in subsections (f) and (g) of this section; before approving the application the commissioner shall find that the business entity has designated a licensed surplus lines broker responsible for the business entity's compliance with the insurance laws, rules and regulations of this state.