2019 Fall National Meeting
Austin, Texas

RISK RETENTION GROUP (E) TASK FORCE
Saturday, December 7, 2019
3:00 – 4:00 p.m.
JW Marriott Austin—Lone Star Ballroom A-C—Level 3

ROLL CALL

Michael S. Pieciak, Chair Vermont Matthew Rosendale Montana
Stephen C. Taylor, Vice Chair District of Columbia Barbara D. Richardson Nevada
Colin M. Hayashi Hawaii John G. Franchini New Mexico
Nancy G. Atkins Kentucky Glen Mulready Oklahoma
James J. Donelon Louisiana Raymond G. Farmer South Carolina

NAIC Support Staff: Becky Meyer

AGENDA

1. Consider Adoption of its October 7 Meeting Minutes—Sandra Bigglestone (VT) Attachment One

2. Consider Adoption of the Following Documents—Sandra Bigglestone (VT) Attachment Two
   - Frequently Asked Questions (FAQ)
   - Best Practices – Risk Retention Groups
   - NAIC Uniform Risk Retention Group Registration Form
   - Comments:
     o District of Columbia (incorporated into Attachments Two and Three)
     o National Risk Retention Association (NRRA)
     o Vermont Captive Insurance Association (VCIA)

3. Discuss Next Steps for the Task Force—Sandra Bigglestone (VT) Attachment Six
   - Summary of Concerns Regarding Registration of RRGs in Non-Domiciliary States
   - NRRA November 19, 2018 Letter
   - VCIA July 19, 2019 Letter

4. Discuss Any Other Matters Brought Before the Task Force—Sandra Bigglestone (VT) Attachment Seven

5. Adjournment

Attachment Eight

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The Risk Retention Group (E) Task Force met via conference call Oct. 7, 2019. The following Task Force members participated: Michael S. Pieciak, Chair, represented by Sandra Bigglestone (VT); Stephen C. Taylor, Vice Chair, represented by Sean O’Donnell (DC); Nancy G. Atkins represented by Sandy Batts (KY); James J. Donelon represented by Stewart Guerin (LA); Matthew Rosendale represented by Steve Matthews (MT); Barbara D. Richardson represented by Kathy Kelley (NV); Glen Mulready represented by Joel Sander (OK); and Raymond G. Farmer represented by Michael Shull (SC). Also participating was: John Talley (MO).

1. **Adopted its May 8 and Summer National Meeting Minutes**

   Mr. Shull made a motion, seconded by Mr. O’Donnell, to adopt the Task Force’s May 8 (Attachment A) and Aug. 3 (see NAIC Proceedings – Summer 2019, Risk Retention Group (E) Task Force) minutes. The motion passed unanimously.

2. **Adopted its 2020 Proposed Charges**

   Ms. Bigglestone stated that a new charge is proposed for 2020 to better align with the ongoing work the Task Force is doing to address questions raised related to the registration of risk retention groups (RRGs) in non-domestic states. Overall, the focus for the next year will be to monitor the progress of the work the Task Force has done so far on this issue. The Task Force will then consider how effective the guidance and information is, provide training on the guidance and information, and ultimately determine if there is more work that needs to be done based on feedback received.

   Mr. Matthews made a motion, seconded by Ms. Batts, to adopt the Task Force’s 2020 proposed charges (Attachment B). The motion passed unanimously.

3. **Discussed Comments on the Exposure of the FAQ, Best Practices and Registration Form**

   Ms. Bigglestone stated that the three documents that were exposed: frequently asked questions (FAQ) (Attachment C), Best Practices for RRGs (Attachment D), and the NAIC Uniform Risk Retention Group Registration Form (registration form) (Attachment E), were developed as a result of concerns raised by both industry and non-domestic states about the registration process for RRGs in non-domestic states. A total of seven comment letters were received from: District of Columbia, Nevada; Pennsylvania; National Risk Retention Association (NRRA); the Nonprofits Insurance Alliance; the Vermont Captive Insurance Association (VCIA); and the Premier Insurance Management Services (Attachment F).

   All comments as shown on the three documents were agreed to by the Task Force with the exception of the following: 1) discussion on the FAQ of what constitutes a “complete” registration form; 2) inclusion of biographical affidavits for all board members on the best practices listing of items provided to the domestic state; and 3) comments on the registration form related to items 7, 17 and 19. These items require more discussion and have been sent back to the volunteer group to recommend a solution to the Task Force. This recommendation will then be exposed for a public comment period prior to the Fall National Meeting.

   In addition to the comments discussed, Mr. Talley raised a question about handling the registration for an RRG in a hazardous financial condition or that is otherwise non-compliant. Robert H. Myers Jr. (NRRA) referenced the remedies put forth in Section 3902(a)1 of the Liability Risk Retention Act (LRRA). He also mentioned the importance of communication with the domestic state.

   Having no further business, the Risk Retention Group (E) Task Force adjourned.
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1. What publications are available to help understand RRGs and state’s authority?
      The following key documents can be found as Appendices in the Handbook:
      • Appendix A: Federal Liability Risk Retention Act
      • Appendix B: NAIC Model Risk Retention Act (#705)
      • Appendix D: NAIC Uniform Risk Retention Group Registration Form
   b. Accreditation Program Manual
      • Part A: Laws and Regulations – 18 accreditation standards that outline the laws required specifically for states that charter RRGs
      • Part B: Regulatory Practices and Procedures - RRG specific procedures for financial analysis and procedures when a disclaimer of affiliation is filed
      • Interlineations – Reinsurance guidelines for RRG’s licensed as captive insurers

2. How does the LRRA address regulation of RRGs?
   a. Under §3902 of the LRRA, with the exception of the domiciliary state, RRGs are exempt from all state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the formation and operation of an RRG, except as provided in the LRRA. Only the domiciliary state may regulate the formation and operation of an RRG.
   b. The implementation of the LRRA was intended to allow organizations to come together in the creation of a risk-bearing, risk-sharing entity (the RRG) to offer its members, who are the beneficiaries of the insurance provided, liability coverage in an expedient and economical manner.

3. How does RRG registration in a non-domiciliary state differ from the licensing process for a traditional insurer?
   a. There are no solvency requirements imposed by the non-domiciliary state upon an RRG seeking to register in the State. Regulation as to formation and operation, including the imposition of solvency requirements, are imposed by the domestic state.
   b. RRGs are subject to a substantially similar application and licensing process imposed by the domestic state, or state of domicile. For registration to conduct business in non-domestic states, RRGs are not subject to the standard application and licensing process (NAIC UCAA Instructions or NAIC Company Licensing Handbook).
   c. The registration process is intended to be simpler than the licensing process for other types of insurers. Registration is focused on information gathering rather than decision making. Registration is not the same as admission or company licensing; it is not intended to provide non-domiciliary states with any regulatory powers over RRGs other than that provided in the LRRA. It is not within a state’s authority to use the processing of a registration to bar RRGs seeking to lawfully operate in a state, nor can a state declare a “moratorium” on the filing of
RRG registrations. Once an RRG provides a complete NAIC Uniform Risk Retention Group Registration Form, they may begin operating in the state and approval from the non-domestic state is not required. However, best practice is for the non-domiciliary state to notify the RRG following their initial review of the NAIC Uniform Risk Retention Group Registration Form that either the form received was complete, or that the form was missing information. The non-domiciliary state may also reach out to the domiciliary state for more information and is encouraged to do so. (see the Best Practices—Risk Retention Groups document)

d. The LRRA references two documents that must be provided to the non-domestic state – a plan of operation OR a feasibility study. There is also additional information such as contact information of the RRG, chartering state information, and the lines of liability insurance business that are written by the RRG seeking to register. All this information is provided in the completed NAIC Uniform Risk Retention Group Registration Form.

e. For an RRG that is compliant with the LRRA and the regulation of their domestic state (including authorization to register to do business in another state), the non-domestic state cannot deny the RRG’s registration. If there is uncertainty, the domestic state should be contacted.

4. What are the steps for the non-domiciliary insurance regulator to take in the registration process for an RRG?

a. Review the NAIC Uniform Risk Retention Group Registration Form and verify the RRG has provided a complete form.

b. Once a complete form is received, the RRG is authorized to write in the state where it registers. The following best practices may also be considered during the registration process; however, they do not impact the registration status of the RRG:

   a. Review the information provided with the registration form for reasonableness.

   b. Reach out to the domestic state insurance regulator for additional information or concerns. The best practices Inquiry Template can be used and modified as appropriate.

   c. Notify the RRG once the registration form is deemed complete. They are now registered in the state.

5. What should a non-domiciliary state do if they have concerns about a complete RRG registration form received?

a. If the RRG provided a complete form, but there are concerns about the lines of business or financial solvency, or some other matter, the non-domiciliary state should first communicate with the domestic state. If necessary, the non-domiciliary state should consider pursuing the remedies in LRRA §3902(a)(1) also discussed in FAQ #12.

6. When can a non-domiciliary state reject an RRG registration?

a. A non-domestic state cannot reject the registration of an RRG that submits a complete registration form. Instead the non-domestic state should communicate concerns to the domestic state or refer to the remedies in LRRA §3902(a)(1) also discussed in FAQ #12.
7. Can an RRG registration be delayed if a financial statement filing and/or audit is not yet available at the time of application or registration?
   a. No, an RRG can register prior to filing of an annual financial statement audit and a statement of opinion on loss and loss adjustment expense reserves with its domiciliary state.
   b. Once these initial filings are made, they are available on I-Site for review.
   c. If questions arise due to lack of this information, the non-domiciliary state should reach out to the domestic state to address its concerns.

8. What items does the LRRA require an RRG provide to the non-domiciliary state in conjunction with the registration?
   a. It is recommended that states adopt the NAIC Uniform Risk Retention Group Registration Form, which has been developed by the NAIC in order to facilitate uniformity. Such forms are included in the Risk Retention and Purchasing Group Handbook.
   b. Consistent with LRRA, each RRG shall submit a copy of the plan of operation OR a feasibility study before it may offer insurance in the state.
      Note: If the RRG is newly formed, the feasibility study provides relevant information on rates and expected losses. If the RRG is expanding the states in which it operates and has been writing business for an extended period, the feasibility study becomes less relevant and a current business plan, along with documents a non-domiciliary state can easily obtain from the NAIC’s I-Site (Annual Statement(s), RBC Report(s), MD&A(s), Audited Financial Statement(s), Actuarial Certification(s)) provide pertinent information.
   c. If the plan of operation or feasibility study does not appear to be updated, a non-domiciliary state should contact the domiciliary state regulator to obtain more information, including the IPS, and may request revised documents from the RRG if original submission is found to be inaccurate or unclear.

9. What should be included in a plan of operation?
   a. The LRRA states that an RRG’s plan of operation or feasibility study includes information on liability insurance coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.
   b. In addition, the Best Practices – Risk Retention Groups document offers a list of other suggested items for inclusion in a plan of operations or feasibility study.

10. Where can the non-domiciliary state get information about an RRG’s directors and officers?
    a. Directors and officers are listed in the annual and quarterly financial statements available from the NAIC’s I-Site. All changes in Directors and Officers, with accompanying biographical affidavit(s), are submitted to and reviewed by the domiciliary state. In order to eliminate the need for redundant regulatory functions and unnecessary transfer of sensitive personal identifiable information, a non-domiciliary state should rely on the domiciliary state’s review, which includes background checks on directors, officers and key management personnel of an RRG to ensure the competency, character and integrity of the insurer’s management.
10.11. **What does the LRRA say about renewals for RRGs in non-domiciliary states?**

a. The LRRA is silent; therefore, initial registration is sufficient unless the operation of an RRG is affected by runoff, rehabilitation or liquidation processes. RRGs file changes in business plans, financial filings, etc. on an ongoing basis with non-domiciliary states; therefore, non-domiciliary states should consider developing a process for communicating with the domiciliary state (such as the example in the Best Practices—Risk Retention Groups document) and consider an annual request for Certificate of Good Standing/Compliance from the domiciliary state.

b. Section 3902(d)(3) of the LRRA requires that an RRG submit to the insurance commissioner of each state in which it is doing business a copy of the annual financial statement that it files with the RRG's domiciliary state. Non-domiciliary states should be aware that in many states where RRGs are licensed/chartered as captive insurers in conformity with NAIC accreditation standards, RRGs are permitted to use Generally Accepted Accounting Principles rather than Statutory Accounting Principles to report on their financial conditions, with required disclosure and reconciliation in footnote one. (see also Section II, page 3 of the Risk Retention and Purchasing Group Handbook)

c. The filing is an ongoing requirement that must be complied with on an annual basis and is generally due to non-domiciliary states upon filing with the domiciliary state. The annual filing requirements for RRGs include an unaudited filing using the official Annual Statement Blank (property/casualty), an audited financial statement certified by an independent public accountant and a statement of opinion on loss and loss adjustment expense reserves made by an actuary or loss reserve specialist who is qualified in accordance with the criteria established by the NAIC in the annual statement instructions. See the above-mentioned NAIC Accreditation Program Manual, Part A: Laws and Regulations for annual filing requirements for RRGs.

11.12. **What does the LRRA say about taxes and fees charged by a non-domiciliary RRG?**

a. LRRA S3902(a)(1)(B) says any state may require an RRG to:
   
   a. Pay on a nondiscriminatory basis, applicable premium and other taxes, which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the state.
   
   b. Fees are not directly addressed in the LRRA and as such, there has been disagreement about the legality of both initial and renewal registration fees and compliance with LRRA. The authority on this topic is therefore federal case law. For example, there is one case (*Nat’l Risk Retention Assoc. v. Brown*, 927 F. Supp. 195 (M.D. La. 1996)) in which the court ruled that certain state requirements, including the payment of an annual renewal registration fee, were preempted by the LRRA. See the Risk Retention and Purchasing Group Handbook for additional detail on relevant cases and other fee considerations.

12.13. **What remedies are available to a non-domiciliary state if violations of applicable State laws occur?**

a. Secure clarification from the RRG’s state of domicile;

b. Call for an examination of the RRG by the state of domicile [15 U.S.C. §3902(a)(1)(E)];

13.14. Is there a list of domestic and non-domestic state contact persons in state insurance regulator offices who are knowledgeable about RRGs?
   a. Yes. Appendix C of the NAIC Risk Retention and Purchasing Group Handbook includes a list of state insurance department contact persons. The most recent list is maintained as a separate document on the NAIC’s publication webpage alongside a complete copy of the Risk Retention and Purchasing Group Handbook. (Link to Handbook: https://www.naic.org/documents/prod_serv_legal_ris_bb.pdf)
Best Practices – Risk Retention Groups

The domiciliary state maintains authority and has responsibility to regulate the formation and operation of a Risk Retention Group (RRG). Therefore, when concerns arise in a non-domiciliary state about a RRG, the best resource is the domiciliary state. This includes concerns about solvency and capital levels, financial condition, or other non-compliance of an RRG as well as operational questions and concerns that should be directed to the domiciliary state.

States are encouraged to examine their RRG laws to make certain that they are consistent with (1) the LRRA and (2) the NAIC Model Risk Retention Act.

Questions/Concerns from Non-domiciliary State
Upon initial registration of an RRG in a non-domiciliary state, it is not uncommon for questions to arise that are best directed to the domiciliary state. Attachment A outlines a sample Inquiry Template that can be used to request this information. The template may be customized as deemed appropriate by the non-domiciliary state. Domiciliary states should respond in a timely manner to such requests.

Questions about operations and financial solvency that arise following initial registration should also be addressed to the domiciliary state.

If significant concerns still exist after communication with the domiciliary state and the non-domiciliary state concludes that the RRG is not compliant with any of the specific procedures set forth in the LRRA, the following steps may be undertaken:
   a. Refer to your own state RRG statute to ensure compliance of your prospective action;
   b. Provide written notice of any non-compliance directly to the RRG;
   c. Submit a demand for examination of the RRG to the domiciliary regulator, as provided by the LRRA [15 U.S.C. S3902(a)(1)(E)];
   d. Institute suit in a court of competent jurisdiction.

A non-domiciliary state may request the following from the domiciliary state and similarly, the domiciliary state should be prepared to provide the following to the non-domiciliary state:
   e. Insurer Profile Summary (IPS)
   f. Inquire about the extent of biographical affidavit review and results of background checks
   g. Most recent examination report (may be obtained from I-Site)
   h. Amendments to the RRG’s business plan or feasibility study
   i. Verification of domiciliary state approval to expand into non-domiciliary state

Alternatively, Attachment A – Inquiry Template may be used for this request with modifications as necessary.
Registration Timeline
The registration process for RRGs should be shorter than the licensing process for other types of insurers as the RRG is responsible only for a complete registration form* and the related attachments. The non-domiciliary state cannot reject a complete registration* that complies with those laws of the non-domiciliary state that are not preempted under the LRRA. In the event a non-domiciliary state has concerns with an RRG registration, such concerns should be raised with the domiciliary state, who has the authority to regulate the formation and operation of an RRG. The following guidelines take into consideration similar guidelines for ordinary insurance companies, and adherence is at the discretion of each state.

- A non-domiciliary state should review the registration form to ensure all required information is entered on the form within 10 business days of its receipt of the form and notify the Risk Retention Group of the need to submit any missing elements.
- Following receipt of a complete registration* application, a non-domiciliary state should notify the RRG within 30 days that its registration is confirmed.
- The domiciliary state should respond to inquiries from a non-domiciliary state in a prompt manner, typically no later than 10 business days after receiving the inquiry.


Domiciliary State Responsibilities
When a domiciliary state identifies an RRG as troubled or potentially troubled, the State insurance regulator should make efforts to communicate proactively with other state insurance regulators in which the RRG is registered (consistent with the Troubled Insurance Company Handbook). Although the domiciliary regulator is responsible for taking actions involving their domiciliary RRGs, awareness by a non-domiciliary state may help them to proactively do what they can to protect their residents and respond to policyholder complaints or concerns directed to them.

General Licensing Guidance
Domiciliary states should ensure the RRG’s application for licensing, which includes the plan of operation and feasibility study, includes the following, at a minimum:
- Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations;
- Information sufficient to verify that the liability insurance coverage to be provided by the Risk Retention Group will only cover the members of the Risk Retention Group;
- For each state in which it intends to operate, information regarding the liability insurance coverages, deductibles, coverage limits, rates and/or rating/underwriting methodology for each line of commercial liability insurance the group intends to offer;
- Historical and expected loss experience of proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
- appropriate opinions/feasibility work by a qualified independent casualty actuary, including a
determination of minimum premium participation levels required to commence operation and to
prevent a hazardous financial condition;
- pro forma financial statements and projections, including assumptions, on an expected and adverse
basis;
- identification of Board of Directors, including independence determination;
- biographical affidavits for all BOD members;
- evidence of compliance with corporate governance standards, including draft policies;
- underwriting and claim procedures;
- marketing methods and materials if available;
- draft insurance policies;
- names of reinsurers and reinsurance agreements, if available;
- investment policies;
- identification of each state in which the RRG intends to write business/register;
- identification of service providers, including fee structure and relationships to members; and
- subsequent material revisions to the plan of operation or feasibility study.

Commented [MB1]: Premier: Will listing this here prompt
a non-domiciliary state to also ask for it when this is
something handled by the domestic state? Limiting the
distribution of confidential information (such as SSN#s) can
help ensure this information is not subject to a security
breach and remains confidential.

Commented [MB2R1]: Drafting Group recommends
adding the following FAQ to the FAQ document.
FAQ: Where can the non-domiciliary state get
information about an RRG’s directors and officers?
• Directors and officers are listed in the annual and quarterly
  financial statements available from the NAIC’s I-Site. All
  changes in Directors and Officers, with accompanying
  biographical affidavit(s), are submitted to and reviewed by
  the domiciliary state. In order to eliminate the need for
  redundant regulatory functions and unnecessary transfer of
  sensitive personal identifiable information, a non-
  domiciliary state should rely on the domiciliary state’s
  review, which includes background checks on directors, 
  officers and key management personnel of an RRG to
  ensure the competency, character and integrity of the
  insurer’s management.
Attachment A – Inquiry Template

The above-subject company has applied for Registration as a Risk Retention Group (“RRG”) in the State of __________ to write ______________ liability coverage to its members who are in the business of________________. As you can appreciate, due to the provisions of the Liability Risk Retention Act of 1986 the (state) has limited authority to regulate RRGs and therefore to a large extent, the (state) relies on the RRGs’ domiciliary state to exercise general oversight and responsibility in the areas of licensing, solvency, rates and marketing. As part of our due diligence, we would appreciate any information your office can share with us regarding the company with respect to the following items, some of which may be satisfied by providing the Insurer Profile Summary:

1. Any significant concerns the State of [domicile] has regarding the company.
2. Any issues that may have a significant impact on the company going forward.
3. Any issues regarding the number of consumer complaints the company has in [state of domicile] or other states that may have been brought to your attention.
4. Comments and/or concerns about the financial condition of the company.
5. Comments and/or concerns about the management or performance of the company.
6. Results of any financial analysis and/or market conduct findings.
7. The company’s priority level within the Financial Analysis Division.
8. Any conditions imposed by your Department upon the company’s license.
9. Any significant non-compliance issues with the State of [domicile] regulatory authority including filing requirements and corrective action, if any.
10. Comments regarding the company’s application for registration in the State of [state registering].
11. Approval from State of [domicile] for the RRG to register in the State of [state registering].
MEMORANDUM

TO: Property and Casualty Insurance (C) Committee
FROM: Risk Retention Group (E) Task Force
DATE: December __, 2019
RE: Revisions to the NAIC Uniform Risk Retention Group Registration Form

The Risk Retention Group (E) Task Force has worked to address concerns from non-domiciliary states and industry regarding the registration process of risk retention groups (RRGs) in non-domiciliary states.

Concerns were initially raised by the National Risk Retention Association (NRRA) in a letter to the Task Force dated Nov. 19, 2018. The letter specifically cited extensive registration processing time and fees imposed. In discussions that followed, non-domiciliary states also raised concerns, including RRGs attempting to register that were in a hazardous financial condition or were not compliant with the federal Liability Risk Retention Act (LRRA).

To help address some of the concerns, the Task Force proposed updates to the NAIC Uniform Risk Retention Group Registration Form (Registration Form). The revisions were exposed for two public comment periods before finalizing the attached recommendation to the Property and Casualty Insurance (C) Committee.

The Task Force requests that the Committee consider adopting the proposed revisions to the Registration Form for inclusion in the Risk Retention and Purchasing Group Handbook.

If you have any questions regarding this referral, please contact NAIC staff (Becky Meyer, bmeyer@naic.org).

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The following is the uniform registration form adopted in 1991 by the NAIC. This registration form is being filed by a Risk Retention Group (RRG) operating in accordance with the Federal Liability Risk Retention Act of 1986 (LRRA), 15 USC 3901-3906, chartered or licensed to write only liability insurance by the state of domicile listed in #1e. The registration form and supplemental documents are provided in accordance with §3902(d)(2) of the LRRA. Under §3902 of the LRRA, with the exception of the domiciliary state, RRGs are exempt from any state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the operation of an RRG, except that any state may require an RRG to comply with those laws specified in §3902(a)(1)(A),(B),(C) and (G) of the LRRA. The domiciliary state regulates the formation and operation of the RRG.

**Part A**

STATE OF [Insert State in which the Risk Retention Group intends to do business]
DEPARTMENT OF INSURANCE
RISK RETENTION GROUP - NOTICE AND REGISTRATION
(All Information Should Be Typed)

1a. Name of the Risk Retention Group as it appears on its Certificate of Authority:

1b. Address of the Risk Retention Group:

1c. NAIC Company Code:

1d. FEIN:

1e. State of domicile, date licensed and date chartered:

1f. Primary contact person for state of domicile to whom questions regarding the Risk Retention Group should be addressed (include name, phone number and email address):
2. List any other name(s) by which the Risk Retention Group is known or may be doing business in this State or any other state:

   __________________________________________

3. The Risk Retention Group is chartered and licensed as a liability insurance company under the laws of the State of ____________, and is authorized to engage in the following lines and/or classifications of liability insurance under the laws of its chartering State:

   __________________________________________

4. Give a general description of the liability insurance coverages the Risk Retention Group plans to write in the state it is registering to do business in.

   __________________________________________

5. Has the Risk Retention Group’s domiciliary state approved the Risk Retention Group to register and expand its writings in the state it is seeking to become registered in?

   __________________________________________

6. Ownership of the Risk Retention Group consists of one or the other of the following (check one):
   a) _____ the owners of the Group are only persons who comprise the membership of the Group and who are provided insurance by the Group.
   b) _____ the sole owner of the Group is: ____________________________
      (Name and Address of Organization)
      an organization which has as its members only persons who comprise the membership of the Group and which has as its owners only persons who comprise the membership of the Group and who are provided insurance by the Group.

7. The Risk Retention Group members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business (whether profit or nonprofit), trade, product, services (including professional services), premises or operations. Give a general description of businesses or activities engaged in by the Group’s members:

   __________________________________________

8. (a) List the name, position with the Risk Retention Group, SS#, and address of each officer and
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

director of the Risk Retention Group: (Attach additional pages, if necessary.)

(b) Identify and give the telephone number of the officer or director of the Risk Retention Group who can be contacted for any information regarding the management of the insurance activities of the Group:

Name: __________________________ Telephone Number: __________________________

9. List the name, address, and telephone number and Federal Employer Identification Number (FEIN) of the company responsible for managing the insurance operations of the Risk Retention Group and the contact person’s name, telephone number and email, at the company. (If none, answer none.)

Contact Person: __________________________ Telephone # __________________________
Email: __________________________

10. List the name(s), NPR#, SS#, and address(es) of the licensed insurance agent(s) or broker(s) who will be responsible for marketing the Risk Retention Group’s insurance policies in the State of [Insert State in which the Risk Retention Group intends to do business] and the current licensing status in the State(s) [Insert State in which the Risk Retention Group intends to do business] in which they are licensed. (If none, answer none. Attach additional pages, if necessary.)

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11. In accordance with the Liability Risk Retention Act, we verify the following:

A. The Risk Retention Group is a corporation or other limited liability association whose primary activity consists of assuming and spreading all, or any portion, of the liability

Commented [MB3]: Items a-d are not new, but were previously items #3, 4, 6 and 9 on the original form.
The Risk Retention Group is organized for the primary purpose of conducting the activity described under Item “A” above.

The Risk Retention Group does not exclude any person from membership in the Group solely to provide for members of the Group a competitive advantage over such a person.

The activities of the Risk Retention Group do not include the provision of insurance other than:

- liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its Group members; and
- reinsurance with respect to the similar or related liability exposure of another Risk Retention Group (or a member of such other Risk Retention Group) engaged in business or activities so that such Risk Retention Group or member meets the requirement under Item #7 above for membership in the Risk Retention Group which provides such reinsurance.

In accordance with the LRRA, if the State in which the Risk Retention Group is registering requires compliance with the following laws and requirements, the RRG agrees to the following:

- The Risk Retention Group will comply with the unfair claim settlement practices laws of this State.
- The Risk Retention Group will pay, on a non-discriminatory basis, applicable premium and other taxes which are levied on admitted insurers, surplus line insurers, brokers or policyholders such Group under the laws of this State.
- The Risk Retention Group will participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism.
- The Risk Retention Group will designate the Insurance Commissioner [Director, Superintendent] of this State as its agent solely for the purpose of receiving service of legal documents or process by executing Part B of this form, attached hereto.
- The Risk Retention Group will submit to examination by the Insurance Commissioner [Director, Superintendent] of this State to determine the Group’s financial condition, if:
  - the Insurance Commissioner [Director, Superintendent] of the Group’s chartering State has not begun or has refused to initiate an examination of the Group; and
  - any such examination by the Insurance Commissioner [Director, Superintendent] shall be coordinated to avoid unjustified duplication and unjustified repetition.
- The Risk Retention Group will comply with a lawful order issued in a delinquency proceeding commenced by the Insurance Commissioner [Director, Superintendent] of this State upon a finding of financial impairment, or in a voluntary dissolution proceeding.
- The Risk Retention Group will comply with the laws of this State concerning regarding
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction.

G.H. The Risk Retention Group will comply with an injunction issued by a court of competent jurisdiction upon petition by the Insurance Commissioner [Director, Superintendent] of this State alleging that the Group is in hazardous financial condition or is financially impaired.

H.I. The Risk Retention Group will provide the following notice, in at least 10-point type, in any insurance policy issued by the Group:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group.

12.13. In accordance with the LRRA, the Risk Retention Group affirms that it has submitted to the Insurance Commissioner [Director, Superintendent] as part of this filing and before it has offered any insurance in this State, a copy of the plan of operation or feasibility study which it has filed with the Insurance Commissioner [Director, Superintendent] of its chartering State of domicile. This plan or study includes the name of the State in which the Group is chartered, as well as the Group’s principal place of business, and such plan of operation or feasibility study further includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of liability insurance the Group intends to offer. The Group has also submitted to the Insurance Commissioner [Director, Superintendent] of this State any revisions of such plan of operation or feasibility study to reflect any changes to the plan if the Group intends to offer any additional lines of liability insurance or, including any change in the designation of the State in which it is chartered.

13.14. The Risk Retention Group will submit a copy of its annual financial statement submitted to its chartering state, to the Insurance Commissioner [Director, Superintendent] of this State, by March 1 of each year. The annual financial statement shall be certified by an independent public accountant and include a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist. The annual financial statement, certification and statement of opinion on loss and loss adjustment expense reserves will be submitted to the Insurance Commissioner [Director, Superintendent] of this State by the date it is required to be submitted to its chartering state.

14.15. The Risk Retention Group will not solicit or sell insurance to any person in this State who is not eligible for membership in the Group.

15.16. The Risk Retention Group will not solicit or sell insurance in this State, or otherwise operate in this State, if the Group is in hazardous financial condition or is financially impaired.

16.17. The Risk Retention Group will not issue any insurance policy in this State which provides coverage prohibited generally by statute of this State or declared unlawful by the highest court of this State whose law applies to such policy. In accordance with the LRRA, the terms of any insurance policy provided by the Risk Retention Group shall not provide or be construed to provide insurance policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

17. The Risk Retention Group has submitted a registration fee of $____________, if applicable, payable to the Insurance Commissioner [Director, Superintendent] of this State.
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

18. To the extent required by the LRRA, the Risk Retention Group will comply with all other applicable state laws.

19. The Risk Retention Group will notify the Insurance Commissioner [Director, Superintendent] as to any subsequent changes in any of the items included in this form (except for items #1F, #8 and #10).

The undersigned hereby swear and affirm that the foregoing statements and information regarding their principal, the (Name of Risk Retention Group) are true and correct.

President of the Risk Retention Group

Secretary of the Risk Retention Group

State of [ ]

County of [ ]

Sworn before me this [day of [ ]], 20[ ] .

[ ], Notary Public. My Commission Expires: [ ]

Commented [MB6]: Pamela Davis: Is the Insurance Commissioner in Item 19 the domicile or non-domicile Commissioner? If non-domicile, does that mean that an RRG must report every change in the board of directors to every non-domicile regulator? If so, how soon after the change?

Commented [MB7R6]: Drafting Group notes the reporting is to the non-domiciliary regulatory and recommends including a list of items that would not require notification (#1F, #8 and #10 on this form).

Further, the drafting group recommends adding an item to the Task Force’s Issues Summary to consider if further guidance should be considered in the future.
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

Part B

APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE AND DESIGNATION

The ________________________________ (“the Group”), a risk retention group which is chartered and licensed as a liability insurance company under the laws of the State of _______________, having notified the Insurance Commissioner [Director, Superintendent] of the State of _______________ of its intention to do business in this State as a risk retention group pursuant to the federal Liability Risk Retention Act of 1986, hereby appoints the Insurance Commissioner [Director, Superintendent] of the State of _______________ , any successor in office, and any authorized deputy its true and lawful attorney, in and for the State of _______________, upon whom all legal documents or process in any proceeding against it may be served. Such service of legal documents or process shall be of the same legal force and validity as if served personally upon the Group.

The Group designates:

________________________________________
(Name)

________________________________________
(Address)

________________________________________
(City, Town or Village)

________________________________________
(State and ZIP Code)

as its officer, agent or other person to whom shall be forwarded all legal documents or process served upon the Insurance Commissioner [Director, Superintendent] of the State of _______________, any successors in office, or any authorized deputy, for the Group. This designation shall continue in full force and effect until superseded by a new written designation filed with the Insurance Commissioner [Director, Superintendent].
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

This appointment and designation is made pursuant to a resolution by the Group’s governing body authorizing it, and a certified copy of the resolution is attached hereto. This appointment shall be binding upon any person or corporation which as successor acquires the Group’s assets or assumes its liabilities, by merger or consolidation or otherwise.

This appointment may be withdrawn only upon a written notice of termination and, in any event, shall not be terminated by the Group or its successor so long as any contracts or liabilities or duties arising out of contracts entered into by the Group while it was doing business in this State are in effect.

IN WITNESS OF THIS APPOINTMENT AND DESIGNATION, the Group, in accordance with the resolution of its Board of Directors duly passed on ____________________, 20__, has affixed its corporate seal, and caused the same to be subscribed and attested in its name by its President and Secretary, at the City of ____________________ in the State of ____________________ on ____________________, 20__.

__________________________
(Name of Risk Retention Group)

By: _________________________ President

__________________________ Secretary

State of____________________

) ss:

County of___________________

Sworn before me this____ day of_______________________, 20__.

__________________________, Notary Public. My Commission Expires: ____________
This page is intentionally left blank.
November 8, 2019

VIA EMAIL - BMeyer@naic.org

Becky Meyer, CPA
Senior Accreditation Manager
National Association of Insurance Commissioners
1100 Walnut, Suite 1500
Kansas City, MO 64106

Re: Comments on Risk Retention Group (E) Task Force on RRG Notice and Registration Form, Frequently Asked Questions, and Best Practices

Dear Ms. Meyer:

The National Risk Retention Association (“NRRA”) appreciates the opportunity to comment on the three documents issued by the Risk Retention (E) Task Force (“RRG Task Force”) on October 18, 2019:

1. NAIC Uniform Risk Retention Group – Notice and Registration Form
2. Risk Retention Groups: Frequently Asked Questions

NRRA has no specific changes to suggest to these documents. We appreciate the hard work of the Task Force, particularly the Drafting Group, in producing these documents. We believe that when the documents are adopted by the states and put into use on a daily basis, they will provide guidance to both the industry and to the regulators and will help to make the RRG registration process more fair and efficient.

We would particularly like to commend the Task Force on their adherence to the language of the Liability Risk Retention Act, 15 U.S.C. 3901, et seq. The intent of Congress was to enact a type of regulation which provides to the chartering, or “lead state,” the vast preponderance of authority over its RRGs, while specifying those limited authorities permitted under federal law to the non-domiciliary states. Where there is a conflict regarding the interpretation of the law, the federal law, under the Supremacy Clause of the U.S. Constitution, will prevail.
We appreciate your allowing us the opportunity to comment on these documents and will be available at the meeting of the Task Force at the NAIC meeting in Austin, Texas to respond to any inquiries.

Very truly yours,

Joseph E. Deems
Executive Director
National Risk Retention Association

rjm
November 8, 2019

Via email: bmeyer@naic.org

Ms. Becky Meyer, CPA
Senior Accreditation Manager
National Association of Insurance Commissioners
1100 Walnut, Suite 1500
Kansas City, MO  64106

Re: Comments on Risk Retention Group (E) Task Force on RRG Notice and Registration Form; Frequently Asked Questions and Best Practices

Dear Ms. Meyer:

The Vermont Captive Insurance Association (VCIA) and its 450 member organizations appreciate the opportunity to provide comments on the three updated RRG (E) Task Force documents relating to risk retention groups (RRGs).

We greatly appreciate the hard work of the Task Force to tackle many of the issues raised by impermissible requirements imposed by non-domiciliary states on RRGs. VCIA commends the Task Force for its efforts to clarify application of the LRRA and educate state regulators and the RRG community on authority given by the LRRA to domiciliary states and to non-domiciliary states.

We understand the position of the Task Force regarding one of VCIA’s recommendations in the registration form that sought to clarify compliance with the Liability Risk Retention Act (LRRA). We believe that many of the problems encountered by RRGs in non-domiciliary states result from efforts to impose requirements, particularly registration requirements and fees, not permitted by the LRRA. Therefore we suggested adherence to the language in the statute as much as possible.

Overall, the Task Force has done an excellent job addressing and clarifying these issues. The updated NAIC Uniform RRG Notice and Registration Form, Frequently Asked Questions, and Best Practices are comprehensive and straightforward, and provide clarity to the most serious registration issues raised by RRGs.
VCIA comment letter re: NAIC RRG TF Exposure Drafts – November 8, 2019

Thank you again for your work.

[Signature]

Richard Smith
President

cc: Sandra Bigglestone
Vermont Dept. of Financial Regulation
<table>
<thead>
<tr>
<th>Concern/Issue</th>
<th>Possible Action</th>
<th>Status and Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fees charged by non-domiciliary states (initial and renewal registration fees)</td>
<td>• Develop FAQ ✓ • Updates to RRPG Handbook • Updates to the Model Risk Retention Act</td>
<td>Discussed in FAQ</td>
</tr>
<tr>
<td>Delays by non-domiciliary states in processing registration forms</td>
<td>• Develop FAQ ✓ • Updates to RRPG Handbook • Enhance domiciliary state expectations ✓ • Consider subjecting RRGs to Part D of accreditation requirements</td>
<td>Discussed in Best Practices, including enhancing domiciliary state expectations</td>
</tr>
<tr>
<td>Time and resources needed to review and process registrations</td>
<td>• Enhance domiciliary state expectations ✓</td>
<td>Included in Best Practices</td>
</tr>
<tr>
<td>Lack of instructions/clarity in registration process (includes questions about immediacy of writing once registration submitted)</td>
<td>• Updates to RRPG Handbook • Updates to Company Licensing Best Practices Handbook</td>
<td>Updated registration form and Included discussion in FAQ and Best Practices</td>
</tr>
<tr>
<td>Registration forms received that are not complete or accurate (includes business plans that do not reflect current operations)</td>
<td>• Registration Form review Instructions ✓  ○ Updates to RRPG Handbook  ○ Updates to Company Licensing Best Practices Handbook</td>
<td>Updated the registration form itself</td>
</tr>
<tr>
<td>Registration forms received that contain violations</td>
<td>• Registration Form review Instructions ✓  ○ Updates to RRPG Handbook  ○ Updates to Company Licensing Best Practices Handbook • Develop FAQ ✓</td>
<td>Updated the registration form from itself</td>
</tr>
<tr>
<td>Registration forms received for RRG that is insolvent or nearly insolvent</td>
<td>• Enhance domiciliary state expectations ✓</td>
<td>Updated registration form and Included discussion in Best Practices of potential action that can be taken</td>
</tr>
<tr>
<td>Options for recourse by non-domiciliary state if concerns with RRG</td>
<td>• Develop FAQ – References to LRRA ✓</td>
<td>Discussed in FAQ and Best Practices</td>
</tr>
<tr>
<td>Notification to non-domiciliary state if serious issues are noted with RRG</td>
<td>• Enhance domiciliary state expectations (communication) ✔</td>
<td>Discussed in FAQ and Best Practices Continue discussion of best practices in communication between domestic and non-domestic states when violations are identified or a registration is no longer approved by the domestic regulator.</td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>Non-domiciliary state requesting access to same information/detail domiciliary state has upon registration (bios, etc.)</td>
<td>• Enhance domiciliary state expectations (communication) ✔ • Updates to online NAIC databases</td>
<td>Discussed in FAQ and Best Practices</td>
</tr>
<tr>
<td>Process for reporting changes at an RRG to the non-domiciliary regulator (see question 19 on the registration form)</td>
<td>• Best practices for both regulators and industry</td>
<td>Discuss in 2020</td>
</tr>
</tbody>
</table>
November 19, 2018

VIA EMAIL – David.Provost@vermont.gov

NAIC RRG Working Group
Attn: David Provost, Chairman
Vermont Department of Banking, Insurance
89 Main Street, Drawer 20
Montpelier, VT 05602-3101

Re: Request for RRG Working Group Input and Assistance
With Respect to Non-Domiciliary State Registration Actions

Dear Chairman Provost:

This letter is being written on behalf of the National Risk Retention Association (NRRA) to inform the RRG Working Group (Working Group) regarding the imposition of LRRA-prohibited actions on RRGs and the abuse of the registration mechanism by non-domiciliary states. We are seeking the support and proactive attention of the NAIC to benefit the RRG industry as a whole and to achieve consistency in the ways in which our members are treated by all states.

The issues fall into two categories.

Fees

The imposition of state-mandated fees by non-domiciliary states is not permitted under the LRRA. RRGs are now paying over $770,000 per year in fees being charged by a little more than half of all states.

The increasing number of states imposing fees is frankly a matter of great concern for RRGs. The cost of challenging these fees by an individual RRG is prohibitive, which effectively means that the RRG has no effective recourse.

Registration

Section 3902(d) of the LRRA permits a non-domiciliary RRG to do business in a state immediately upon submitting to that state the information delineated in that section. The seminal federal court case on Risk Retention Groups, Nat’l Risk Retention Ass’n v. Brown, 927 F. Supp. 195 (M.D. La. 1996) confirms this position. There is no federal court decision to the contrary.

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Consistent with the lead-state regulatory scheme of the LRRA, many states will promptly issue confirmation of an RRG’s registration in the state upon their receipt of the requisite information mandated under the LRRA and evidence of the RRG’s licensure by its domiciliary regulator. Unfortunately, more states are imposing a “review” process not unlike that imposed on traditional licensed insurers (and in some cases the exact same procedure) when it comes to the registration filing for foreign RRGs. Not only are more states initiating so-called “review” procedures for RRG registration filings, an increasing number of states are routinely taking substantially longer to “review” registration filings.

Beyond the initial registration of a foreign RRG, some states impose an ongoing annual “registration renewal” filing submission or process (e.g., Alaska, California, Iowa, Massachusetts, Mississippi, North Carolina and North Dakota). California’s RRG registration renewal form is five (5) pages long and is “reviewed” by the state insurance department for the RRG’s continued registration.

All of the hurdles outlined above fall well outside the scope of permissible non-domiciliary state authority and run counter to the original premise of the LRRA for the operation of an RRG. Rather than accepting the lead-state regulatory scheme for conducting business in non-domiciliary jurisdictions, many states, in effect, are attempting to second-guess the RRG’s domicile.

These problems represent a serious concern to the RRG community. To date the NAIC utilizes its “accreditation” standards to assess how well domiciliary states regulate their RRGs, but does not consider the unlawful actions undertaken by non-domiciliary states against RRGs.

We would appreciate the opportunity to address these issues in detail and to respond to your inquiries. We would appreciate your placing this letter on the agenda for the next meeting of the Working Group.

Thank you for your attention to this matter.

Very truly yours,

[Signature]

Joseph E. Deems
Executive Director
Chairman, Government Affairs
National Risk Retention Association (NRRA)

cc by email: Sandy Bigglestone (sandy.bigglestone@vermont.gov)
Becky Meyer (BMeyer@naic.org)
Robert H. Myers, Jr. (rmyers@mmmlaw.com)
July 19, 2019

Michael S. Pieciak, Chair
NAIC Risk Retention Task Force
Attention: Becky Meyer, NAIC
1100 Walnut Street
Suite 1500
Kansas City, MO 64106-2197

Dear Commissioner Pieciak and Members of the Risk Retention Group (E) Task Force,

On behalf of the Vermont Captive Insurance Association (VCIA) and its 450 member organizations, I am writing to support your efforts to clarify the issues around Risk Retention Groups (RRGs) and their registration in non-domiciliary states. As you know, the State of Vermont is home to approximately 40% of the roughly 220 active RRGs operating in the United States, most which are members of VCIA. Your activities in this endeavor are both timely and appreciated.

As with the comments filed by the National Risk Retention Association (NRRA) on June 10th, we agree that the NAIC Risk Retention Group Registration Form is not the root cause of the problems that have been identified. Rather, these problems are a direct result of the efforts of non-domiciliary states to impose registration requirements and fees that are not permitted by the Liability Risk Retention Act. These impermissible efforts have resulted in unnecessary expense, delay and frustration on the part of countless organizations seeking to utilize this important risk management tool.

VCIA supports the Task Force’s development of an FAQ document and other guidelines to educate state regulators on the registration process for non-domiciliary RRG’s established by the LRRA. We agree with the NRRA that the FAQ and other materials should conform with the requirements of the LRRA and should clarify the scope of non-domiciliary state authority under the LRRA. We believe the examples provided by the NRRA memo are helpful in this regard.
VCIA Letter to NAIC RRG Task Force | July 19, 2019 | Page 2

We also agree with NRRA’s suggestion that communication between non-domiciliary and domiciliary state regulators can help to resolve some of the problems in this area. To be clear, under the LRRA, submission of a plan of operation and feasibility study approved by an RRG’s state of domicile are the only requirements to register in a non-domiciliary state. Nevertheless, improved communication between non-domiciliary and domiciliary regulators may help avoid delays in acknowledgment of registration and other problems. For example, if a non-domiciliary regulator has a concern or a question regarding a plan of operation or feasibility study approved by the domiciliary regulator, establishing protocols for clarification without imposing unreasonable delays in acknowledgment of the RRG’s registration is important.

The same is true if an issue arises concerning a disparity between the laws of the non-domiciliary and domiciliary states. Any such issue should be resolved in a manner consistent with the LRRA’s designation of the domiciliary state as the lead state regulator. For solvency concerns and other matters, an order of remedies that will assist non-domiciliary states to communicate with domiciliary regulators and, if need be, secure resolution of issues in a manner compliant with the LRRA should be created.

Finally, VCIA concurs with the suggestion that the NAIC (1) request states to examine and, if necessary, amend their RRG laws to ensure they are consistent with the LRRA and the NAIC Model Risk Retention Act; and (2) amend the Licensing Best Practices Handbook to clarify that RRG registration is not a licensing process and is subject to different standards, as set forth in the Risk Retention and Purchasing Group Handbook and other NAIC guidance specific to RRGs.

VCIA would be glad to provide any assistance to the furthering of the task force’s efforts in creating a clear pathway for state insurance regulators to establish a fair and consistent regulatory framework for the risk retention industry.

Thank you for your consideration of our comments.

Sincerely,

Richard Smith
President

180 Battery Street │ Burlington, Vermont 05401-5212
phone: 802-658-8242 │ fax: 802-658-9365 │ e-mail: vcia@vcia.com