



**SURPLUS LINES BULLETIN NO. 9
NONADMITTED INSURANCE REFORM**

TO: All licensed Surplus Lines Brokers, all Insurers eligible to write Nonadmitted Insurance in Delaware, and all Insureds independently procuring Nonadmitted Insurance

RE: Senate Bill 109 Revision of Delaware Code, Title 18, Chapter 19
Implementation of Federal Nonadmitted and Reinsurance Reform Act in Delaware

DATE: August 16, 2011

IMPORTANT:

**THIS BULLETIN SUPERSEDES ALL PREVIOUS SURPLUS LINES BULLETINS
EXCEPT SL BULLETIN NO. 5, LISTING OF ELIGIBLE SURPLUS LINES INSURERS**

PLEASE REVIEW THE INFORMATION IN THIS BULLETIN CAREFULLY

The purpose of this bulletin is to outline nationwide regulatory changes that will affect the placement of nonadmitted insurance [also known as "surplus lines" or "excess lines"] in Delaware. The Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"), 15 U.S.C. § 8201 *et seq.*, provides that only an insured's "Home State" may require the payment of premium tax for nonadmitted insurance. Moreover, the NRRA subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured's Home State, and provides that only the insured's Home State may require a surplus lines broker to be licensed to sell, solicit or negotiate nonadmitted insurance with respect to such insured. "Nonadmitted insurance," as defined in 15 U.S.C. § 8206(9), applies only to property and casualty insurance (excluding workers' compensation).

The NRRA becomes effective on July 21, 2011. For nonadmitted insurance business placed on or after July 21, 2011, the following information is provided for the benefit of insurers, brokers, and insureds:

What is the scope of the NRRA?

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

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

Delaware is the insured's Home State if the insured maintains its principal place of business here or, in the case of an individual; the individual's principal residence is here. If Delaware is considered the insured's Home State, only Delaware's requirements regarding the placement of such business will apply.

If 100% of the insured risk is located outside of Delaware, then the insured's Home State is the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated based on the location of the insured risk(s). If more than one insured from an affiliate group are named insureds on a single nonadmitted insurance placement, Delaware will be considered the Home State for that placement if Delaware is the Home State of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

How will these rules be applied?

New and renewal policies with an effective date prior to July 21, 2011, will be subject to the laws and regulations of Delaware and other jurisdictions, as applicable, as of the policy effective date. The laws and regulations of Delaware and other jurisdictions, as applicable, as of the effective date of such a policy will also apply to any modification to that policy during the policy period, such as all endorsements (including risk- and premium-bearing endorsements), installment payments and premium audits. New and renewal policies with an effective date on or after July 21, 2011, and any modifications thereto, will be subject only to the laws and regulations of Delaware if Delaware is the Home State of the insured.

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

As of July 21, 2011, the NRRRA permits only the insured's Home State to require the payment of premium tax for nonadmitted insurance. Until July 21, 2011, the laws and regulations of Delaware and other jurisdictions, as applicable, will continue to apply to premium tax due on multi-state placements.

It is the intent of the Department to issue additional bulletins if and when Delaware begins participating in a tax sharing arrangement with other states. Until additional bulletins are issued, the entire tax amount should be paid to Delaware at the Delaware tax rate of 2% on 100% of the premium for new and renewal policies with an effective date on or after July 21, 2011, if Delaware is the insured's Home State.

What are the license requirements for brokers?

Only the insured's Home State may require a surplus lines broker to be licensed to sell, solicit or negotiate nonadmitted insurance. If Delaware is the insured's Home State, the surplus lines broker must be licensed in Delaware. The NRRRA provides that states may not collect licensing fees for surplus lines brokers as of July 21, 2012, unless the state participates in the NAIC's national insurance producer database or any other equivalent uniform national database. Delaware participates in the National Insurance Producer Registry (NIPR), which provides such a database. Surplus Lines broker licenses may be obtained at the following website: www.nipr.com. Delaware requires that both individuals and business entities hold a surplus lines license to transact nonadmitted business in Delaware.

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

Each surplus line broker shall be responsible to ensure that a diligent effort is made among insurers that are admitted to transact and are actually writing the particular type of insurance in this State before procuring the insurance for a home state insured from a nonadmitted insurer. Delaware requires a minimum of three declinations from representatives of such admitted insurers. The declinations serve as evidence that the diligent effort was made prior to placing the coverage with a nonadmitted insurer.

On or after July 21, 2011, a surplus lines broker seeking to procure or place nonadmitted insurance on behalf of an "exempt commercial purchaser" is not required to perform a diligent search if: 1) the broker has disclosed to the exempt commercial purchaser that insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and 2) the exempt

commercial purchaser has subsequently requested in writing for the broker to procure or place such insurance from a nonadmitted insurer. “Exempt commercial purchaser” is defined in 18 *Del. C.* § 1914.

What are the eligibility requirements for nonadmitted insurers?

The NRRA 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 [or the minimum capital and surplus amount required in Delaware, whichever is greater].

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

What are the key terms and definitions from the NRRA?

The NRRA includes several new terms and definitions relevant to Delaware’s implementation of its requirements. These key terms and definitions are included in an Addendum to this Bulletin; and all insurers, brokers, and insureds should become familiar with these terms and definitions, along with the other terms defined in 18 *Del. C.* § 1904.

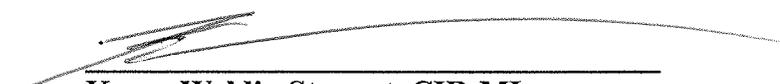
What other changes have been made to Delaware’s Surplus Lines law because of the NRRA?

The new “Delaware Nonadmitted Insurance Act” revises Delaware Code Title 18, Chapter 19 in its entirety. To view the new law, visit this link: <http://delcode.delaware.gov/title18/index.shtml> (NOTE: this new law should be posted at this link by the end of August 2011).

One important stipulation in the new law calls for the Insurance Commissioner to form a study group to perform a fiscal analysis of the affect of NRRA-related changes to Delaware’s revenues. The Commissioner must report the findings to the Legislature in January 2012, at which time a decision will be made as to whether Delaware will enter into a tax sharing arrangement with other states.

To help accomplish the tasks of the fiscal analysis, the Commissioner may require certain informational filings from surplus lines brokers, eligible insurers, and insureds that independently procure insurance from nonadmitted insurers. These informational filings may be in addition to the standard transaction and tax reports. Future bulletins will detail the filing requirements. The Commissioner is aware that this may place an administrative burden on brokers, insurers, and insureds, but it should be a temporary burden limited to the duration of the fiscal analysis. The Commissioner is counting on and appreciates full cooperation as the requirements of the NRRA and the new Delaware Nonadmitted Insurance Act are put into action.

**Watch the Department’s website www.delawareinsurance.gov
for future bulletins and updates.**



**Karen Weldin Stewart, CIR-ML
Insurance Commissioner**

**APPENDIX - SURPLUS LINES BULLETIN NO. 9
DEFINITIONS**

See also 18 Del. C. § 1904

<http://delcode.delaware.gov/title18/index.shtml>

EXEMPT COMMERCIAL PURCHASER. The term “exempt commercial purchaser” means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

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

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

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

a. The person possesses a net worth in excess of \$20,000,000; as such amount is adjusted pursuant to subsection(c) of this section.

b. The person generates annual revenues in excess of \$50,000,000; as such amount is adjusted pursuant to subsection(c) of this section.

c. 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.

d. 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 subsection (c) of this section.

e. The person is a municipality with a population in excess of 50,000 persons.

(4) Effective on the fifth January 1 occurring after the date of the enactment of this chapter and each fifth January 1 occurring thereafter, the amounts in subsections (a), (b), and (d) of clause (3) 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.

HOME STATE. —

a. **IN GENERAL.** Except as provided in subparagraph (B), the term “home state” means, with respect to an insured—

1. 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

2. If 100 percent of the insured risk is located out of the state referred to in subsection a.1. of this section, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

b. **AFFILIATED GROUPS.** If more than 1 insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term “home state” means the home state, as determined pursuant to subparagraph (a), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

HOME STATE INSURED. The term “home state insured” means, unless the context indicates otherwise, an insured whose home state is Delaware.

INDEPENDENTLY PROCURED INSURANCE. The term “independently procured insurance” means insurance procured directly by an insured from a nonadmitted insurer.

NONADMITTED INSURANCE. The term “nonadmitted insurance” means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance. For purposes of this chapter, nonadmitted insurance includes independently procured insurance placed directly and surplus lines insurance.

NONADMITTED INSURER. The term “nonadmitted insurer”—

a. Means an insurer not authorized to engage in the business of insurance in this State; but

b. Does not include a risk retention group, as that term is defined in section 2(a)(4) of the Liability Risk Retention Act of 1986 (15U.S.C. 3901(a)(4)).

PREMIUM TAX. The term “premium tax” means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

QUALIFIED RISK MANAGER. The term “qualified risk manager” means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

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

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

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

(I) The person possesses a net worth in excess of \$20,000,000; as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of \$50,000,000; as such amount is adjusted pursuant to clause (ii).

(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 clause (ii).

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

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this subtitle and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) 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.