

FLORIDA SURPLUS LINES

● SERVICE OFFICE ●

BULLETIN: 2011-02

**TO: FLORIDA SURPLUS LINES AGENTS, INSURERS AND
INDEPENDENTLY PROCURED COVERAGE (IPC) FILERS**

**FROM: GARY D. PULLEN, EXECUTIVE DIRECTOR,
FLORIDA SURPLUS LINES SERVICE OFFICE**

DATE: JULY 21, 2011

**SUBJECT: IMPLEMENTATION OF FEDERAL NONADMITTED &
REINSURANCE REFORM ACT IN FLORIDA**

The purpose of this bulletin is to outline nationwide regulatory changes that will affect the placement of nonadmitted insurance in Florida. The Nonadmitted and Reinsurance Reform Act of 2010 (“NRRA”), 15 U.S.C. § 8201 *et seq.*, provides that only an insured’s “Home State” may require the payment of premium tax for nonadmitted insurance.

Moreover, the NRRA subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured’s Home State, and provides that only the insured’s Home State may require a surplus lines broker to be licensed to sell, solicit or negotiate nonadmitted insurance with respect to such insured. 15 U.S.C. § 8202(a), (b). “Nonadmitted insurance,” as defined in 15 U.S.C. § 8206(9), applies only to property and casualty insurance (excluding workers’ compensation).

In response to the NRRA, the 2011 Florida Legislature passed SB 1816 relative to the collection of the gross premium for multi-state policies. This legislation became effective immediately after signature by the Governor on May 26, 2011. As such, Florida began collecting the entire policy premium for multi-state policies for which Florida is deemed to be the Home State (as defined by the NRRA) effective July 1, 2011.

These policies will be subject to tax provisions outlined in SB 1816 which provides that Florida will tax the gross premium based on the individual states’ tax rates for which each portion of the exposure is located. Service fees will be charged based on the gross premium of the entire policy at Florida’s current rate. Assessments and surcharges will be assessed on the Florida portion of the premium only.

For multi-state policies effective prior to July 1, 2011, only the Florida allocated premium should be reported to FLSO. All other provisions of the NRRA will become effective on July 21, 2011.

FLSO released modifications to the Surplus Lines Information Portal (SLIP) on July 1, 2011 that incorporated new fields for agents completing multi-state filings and premium breakouts. An updated version of the FTP Submit Software format was also made available for download on July 1, 2011 to accommodate the .slx (batch filing) format changes released in early April.

Additional information may be obtained from FLSO’s website at www.fslso.com. If you have any questions, please call our office at (800) 562-4496.

What is the scope of the NRRRA?

The NRRRA 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 NRRRA “may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers’ compensation insurance or excess insurance for self-funded workers’ compensation plans with a nonadmitted insurer.” 15 U.S.C. § 8202. The NRRRA 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 NRRRA 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?

Florida 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 Florida is considered the insured’s Home State, only Florida’s requirements regarding the placement of such business will apply. If 100% of the insured risk is located outside of Florida, 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.

“Principal place of business” means, with respect to determining the Home State of the insured, (a) the State where the insured maintains its headquarters and where the insured’s high-level officers direct, control and coordinate the business activities in more than one State, the State in which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated; or (c) if the insured maintains its headquarters or the insured’s high-level officers direct, control and coordinate the business activities outside any State, the State to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

“Principal residence” means, with respect to determining the Home State of the insured, (a) the State where the insured resides for the greatest number of days during a calendar year; or (b) if the insured’s principal residence is located outside any State, the State to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

If more than one insured from an affiliate group are named insureds on a single nonadmitted insurance placement, Florida will be considered the Home State for that placement if Florida 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?

With regards to regulatory provisions, new and renewal policies with an effective date prior to July 21, 2011 will be subject to the laws and regulations of Florida and other jurisdictions, as applicable, as of the policy effective date. The laws and regulations of Florida 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 Florida if Florida is the Home State of the insured.

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

The NRRRA permits only the insured’s Home State to require the payment of premium tax for nonadmitted insurance to become effective no later than July 21, 2011. The 2011 Florida Legislature passed Senate Bill 1816 which was signed into law by the Governor on May 26, 2011. Per SB 1816, Florida surplus lines

agents must begin filing all new and renewal multi-state policies (and their subsequent endorsements) bearing an effective date of July 1, 2011 with Florida if and only if, Florida is the Home State of the policy. New and renewal multi-state policies with an effective date prior to July 1, 2011 will be filed with their appropriate states for which there is exposure. For these policies, only the Florida allocated premium will be reported to Florida.

As provided by SB 1816, for new and renewal multi-state policies where Florida is the Home State effective July 1, 2011 and thereafter, taxes and service fees will be calculated based on the total gross premium regardless of where the exposure is located. Taxes will be calculated using the tax rates of the states applicable to the premium allocated for each state where the risk is located. Assessments and surcharges will be calculated based on the Florida allocated portion of the policy.

It is the intent of the Department to issue additional bulletins if and when Florida begins participating in a tax sharing arrangement. Until additional bulletins are issued, the Florida tax rate allocation provisions should be applied to new and renewal policies with an effective date on or after July 1, 2011, when Florida is the insured's Home State.

What are the license requirements for agents?

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

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

Florida's Surplus Lines Law requires that a diligent effort to search for available coverage in the admitted market must be made before exporting coverage to the nonadmitted market. F.S. 626.914 states that "Diligent Effort" means seeking coverage and having been rejected by at least three authorized insurers currently writing this type of coverage and documenting these rejections. However, if the residential structure has a dwelling replacement cost of \$1 million or more, the term means seeking coverage from and having been rejected by at least one authorized insurer currently writing this type of coverage and documenting the rejection. Florida surplus lines agents should note that the 2011 Florida Legislative Session incurred change to F.S. 626.916 Eligibility to Export with regards to the diligent effort requirement for certain insurance coverages. For more information, please visit:

<http://www.fslso.com/publications/documents/1087.aspx>

On or after July 21, 2011, a surplus lines agent 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 agent 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 agent to procure or place such insurance from a nonadmitted insurer. For a definition of an "Exempt Commercial Purchaser," please visit:

<http://www.fslso.com/statutes/leg/2010/fed/glossary.aspx>.

What are the eligibility requirements for nonadmitted insurers?

The NRRRA restricts the eligibility requirements a state may impose on nonadmitted insurers. See 15 U.S.C. § 8204. For nonadmitted insurers domiciled in a U.S. jurisdiction, a state may only impose the requirements in conformance with the Non-Admitted Insurance Model Act. However, an agent is only permitted to place business with a foreign insurer on the Florida Eligible Insurers List. For a copy of Florida's Eligible Surplus Lines Insurer List, please visit: <http://www.fslso.com/tools/insurer.aspx>

For nonadmitted insurers domiciled outside the U.S., an agent 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 definitions from the NRRRA?

The NRRRA includes several definitions relevant to Florida's implementation of its requirements. All agents, insurers and IPC filers should be aware of these terms which include the following:

- **Exempt commercial purchaser**
- **Home State**
- **Independently procured insurance**
- **Nonadmitted insurance**
- **Nonadmitted insurer**
- **Premium tax**
- **Qualified risk manager**
- **Surplus lines broker**
- **State**

Definitions for these terms, as defined by the NRRRA, can be found by visiting:

<http://www.fslso.com/statutes/leg/2010/fed/glossary.aspx>