


DEPARTMENT OF INSURANCE, FINANCIAL  
INSTITUTIONS AND PROFESSIONAL REGISTRATION

P.O. Box 690, Jefferson City, Mo. 65102-0690

## INSURANCE BULLETIN 11-05

### Implementation of Federal Nonadmitted and Reinsurance Reform Act in Missouri July 21, 2011

- To:** All insurers eligible to write nonadmitted insurance in Missouri,  
all licensed surplus lines producers, and all insureds independently procuring  
nonadmitted insurance
- From:** John M. Huff, Director 
- Re:** Implementation of federal Nonadmitted and Reinsurance Reform Act in Missouri

This bulletin contains information that may be of interest to the persons to whom this bulletin is addressed. Although this bulletin refers to statutes, regulations or court decisions, this bulletin itself is not a statement of law or legal requirements. This bulletin is for informational purposes only. This bulletin outlines nationwide regulatory changes that will affect the placement of nonadmitted insurance in Missouri. 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.

See 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 as provided in 15 U.S.C. § 8202(d)).

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, self insured and producers:

### **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.” 15 U.S.C. § 8202(a), (d). 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 pre-empts certain state laws with respect to nonadmitted insurance, it does not have any impact on insurance offered by insurers licensed or authorized in a state.

### **What is the insured’s Home State for purposes of a particular placement?**

Under § 384.015(7)(a), RSMo, Missouri 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, unless 100 percent of the insured risk is located outside of Missouri. If Missouri is considered the insured’s Home State, only Missouri’s requirements regarding the placement of such business will apply. If 100 percent of the insured risk is located outside of Missouri, 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.

Under § 384.015(7)(b), RSMo, if more than one insured from an affiliate group are named insureds on a single nonadmitted insurance placement, Missouri will be considered the Home State for that placement if Missouri 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 surplus lines insurance policies with an effective date prior to July 21, 2011, will be subject to the laws and regulations of Missouri and other jurisdictions, as applicable, as of the policy effective date. The laws and regulations of Missouri 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 the Home State of the insured.

### **What are the requirements for premium tax allocation and payment in Missouri?**

As of July 21, 2011, the NRRA 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 Missouri and other jurisdictions, as applicable, will continue to apply to premium tax due on multi-state placements. 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 Missouri if Missouri is the Home State of the insured.

### **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 with respect to a particular placement. If Missouri is the insured's Home State, the surplus lines broker must be licensed in Missouri. The NRRA provides that Missouri may not collect licensing fees for surplus lines brokers as of July 21, 2012, unless Missouri participates in the NAIC's national insurance producer database or any other equivalent uniform national database. 15 U.S.C. § 8203. Missouri 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?**

**384.017.** Surplus lines insurance may be placed by a surplus lines licensee if:

- Each insurer is an eligible surplus lines insurer;
- Each insurer is authorized to write the type of insurance in its domiciliary jurisdiction;
- The full amount or kind of insurance is not obtainable from admitted insurers who are actually transacting in this state the class of insurance required by the insured. Insurance shall be deemed "obtainable" within the meaning of this section if there is available a market with admitted insurers that can supply the insured's requirements both as to type of coverage and as to quality of service. "Type of coverage," as used in this section, refers to hazards covered and limits of coverage. "Quality of security and service," as used in this section, refers to the rating by a recognized financial service; and
- All other requirements of sections 384.011 to 384.071 are met.

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:

- 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
- 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 384.015(5), RSMo.

### **What are the eligibility requirements for nonadmitted insurers?**

The NRRA 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 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 Missouri, whichever is greater. Missouri maintains a list of eligible insurers, which is available on our website at <http://insurance.mo.gov/industry/EligibleSL.php>. An insurer may submit an application with all

required documentation for review. If the insurer is approved, the insurer will be added to the list. The application is located at <http://insurance.mo.gov/industry/forms/index.php>.

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. These approved Alien Insurers are also published on the Missouri list.

### **What are the key definitions from the NRRRA?**

The NRRRA includes several definitions relevant to implementation of its requirements. Key definitions include the following:

**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. **(A)** The person meets at least one of the following criteria:
  - a. The person possesses a net worth in excess of \$20 million, as such amount is adjusted pursuant to clause 3B.
  - b. The person generates annual revenues in excess of \$50 million, as such amount is adjusted pursuant to clause 3B.
  - 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 million, as such amount is adjusted pursuant to clause 3B.
  - e. The person is a municipality with a population in excess of 50,000 persons.

**(B)** Effective on Jan. 1, 2016, and on Jan. 1 of every fifth year thereafter, the amounts in subclauses (a), (b) and (d) of clause 3A shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. 15 U.S.C. § 8206(5).

### **Home State:**

1. **In general.** Except as provided in subparagraph 2, the term “Home State” means, with respect to an insured:
  - A. 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

B. if 100 percent of the insured risk is located out of the state referred to in clause A, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

2. **Affiliated groups.** If more than one 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 1, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract. 15 U.S.C. § 8206(6).

**Independently procured insurance** means insurance procured directly by an insured from a nonadmitted insurer. 15 U.S.C. § 8206(7).

**Nonadmitted insurance** means any property and casualty insurance permitted to be placed directly or through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance. 15 U.S.C. § 8206(9).

**Nonadmitted insurer:**

- means, with respect to a state, an insurer not licensed to engage in the business of insurance in such State; but
- 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 (15 U.S.C. 3901(a) (4)). 15 U.S.C. § 8206(11).

**Premium tax** means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed 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. 15 U.S.C. § 8206(12).

**Qualified risk manager** means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

- The person is an employee of, or third-party consultant retained by, the commercial policyholder.
- The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.
- The person:
  1. has a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other state regulatory official or entity to demonstrate minimum competence in risk management; and
  - has three years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

- has:
  - A. a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as “CPCU”) issued by the American Institute for CPCU/Insurance Institute of America;
  - B. a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;
  - C. a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;
  - D. a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or
  - E. any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;
- 2. has at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and
  - has any one of the designations specified in items A through E of clause (1);
- 3. has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or
- 4. has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a state insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management. 15 U.S.C. § 8206(13).

**Surplus lines licensee** means an individual who is licensed in a State to sell, solicit or negotiate insurance on properties, risks or exposures located or to be performed in a State with nonadmitted insurers. 15 U.S.C. § 8206(15).

**State** includes any State of the United States, District of Columbia, Commonwealth of Puerto Rico, Guam, Northern Mariana Islands, Virgin Islands and American Samoa. 15 U.S.C. § 8206(16).

**If you have questions or concerns, please call Lillian Hand at 573-526-1589 or [e-mail Lillian.Hand@insurance.mo.gov](mailto:Lillian.Hand@insurance.mo.gov).**