

State of Idaho
DEPARTMENT OF INSURANCE

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BULLETIN NO. 11-08

DATE: November 28, 2011

TO: All insurers eligible to write nonadmitted insurance in Idaho, all licensed surplus line brokers, all insureds independently procuring nonadmitted insurance, and stamping offices

FROM: William W. Deal, Director

SUBJECT: Amendments to the Idaho Surplus Line Law, Title 41, Chapter 12, Idaho Code, and Implementation of the Federal Nonadmitted and Reinsurance Reform Act of 2010

On July 21, 2010, the President signed into law the "Dodd-Frank Wall Street Reform and Consumer Protection Act," P.L. 111-203, which includes the "Nonadmitted and Reinsurance Reform Act of 2010" (NRRA), 15 U.S.C. § 8201, *et seq.*

The NRRA 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. It further provides that only the insured's home state may require a surplus line broker to be licensed to sell, solicit or negotiate nonadmitted insurance with respect to such insured. 15 U.S.C. § 8201, *et seq.* "Nonadmitted insurance," as defined in 15 U.S.C. § 8206(9), applies only to property and casualty insurance (excluding workers' compensation).

In consideration of the NRRA and its impact on Idaho, the Idaho Legislature passed, and the Governor signed into law on April 5, 2011, amendments to the surplus line law contained in title 41, chapter 12, Idaho Code. *See*, 2011 Idaho Sess. Laws 517. The amendments are as follows: Idaho Code § 41-1212 limits Idaho's surplus line law to apply only when the insured's home state is Idaho; section 41-1213 enacts certain definitions of terms as stated in the NRRA; and section 41-1214 establishes the conditions for export. The amendments were effective July 1, 2011, except for changes to section 41-1229, Idaho Code, which were effective July 21, 2011.

The purpose of this bulletin is to explain these amendments and to outline national and state regulatory changes that affect the placement of nonadmitted insurance in the state of Idaho.

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. § 8201, *et seq.* (P.L. 111-203). 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 what kinds of insurance an insurer may write in that state. The NRRRA preempts certain state laws with respect to nonadmitted insurance but 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?

Idaho is the insured’s home state if the insured’s principal place of business is maintained here or, in the case of an individual, the individual’s principal residence is here. If Idaho is considered the insured’s home state, only Idaho’s requirements regarding the placement of such business will apply. If 100% of the insured risk is located outside of Idaho, 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. *See*, 15 U.S.C. § 8201, *et seq.*

If more than one insured from an affiliated group is a named insured on a single nonadmitted insurance placement, Idaho will be considered the home state for that placement when Idaho is the home state of the member of the affiliated group having 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 1, 2011, will be subject to the laws and regulations of Idaho and other jurisdictions, as applicable, as of the policy effective date. The laws and regulations of Idaho and other jurisdictions, as applicable, as of the policy effective date 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 1, 2011, and any modifications thereto, will be subject only to the laws and regulations of Idaho if Idaho is the home state of the insured. In addition, on and after July 21, 2011, the allocation of premium tax will change in accordance with the newly amended section 41-1229, Idaho Code. The tax rate of 1.5% will remain the same.

WHAT ARE THE REQUIREMENTS FOR PREMIUM TAX ALLOCATION AND PAYMENT IN IDAHO?

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 the state of Idaho and other jurisdictions, as applicable, apply to premium tax due on multi-state placements.

The Idaho tax rate and allocation should be applied to new and renewal policies with an effective date on or after July 21, 2011, when Idaho is the insured's home state. The Department of Insurance will issue additional bulletins if and when Idaho begins participating in a tax sharing arrangement.

On and after July 21, 2011, the following process and tax rate will be applicable in Idaho in accordance with section 41-1229, Idaho Code:

- (1) On or before the first day of March of each year each broker shall remit to the director a tax on the premiums, exclusive of sums collected to cover federal and state taxes and examination fees, on surplus line insurance subject to tax transacted by [the broker] with unauthorized insurers during the preceding calendar year as shown by his annual statement filed with the director, and at the rate of one and five-tenths percent (1.5%). Such tax shall be in lieu of all other taxes upon such insurers with respect to the business so reported.
- (2) For property and casualty insurance other than worker's compensation insurance, if Idaho is the insured's home state, then the tax so payable shall be computed upon the entire premium under subsection (1) of this section, without regard to whether the policy covers risks or exposures that are located in Idaho. For all other lines of insurance, if a surplus line policy covers risks or exposures only partially in Idaho, the tax so payable shall be computed upon the proportion of the premium that is properly allocable to the risks or exposures located in Idaho.

WHAT ARE THE LICENSE REQUIREMENTS FOR BROKERS?

Only the insured's home state may require a surplus line broker to be licensed to sell, solicit or negotiate nonadmitted insurance with respect to a particular placement. If Idaho is the insured's home state, the surplus line broker must be licensed in Idaho. The NRRA provides that Idaho may continue to collect licensing fees for surplus line brokers after July 21, 2012, because Idaho participates in the National Association of Insurance Commissioners' (NAIC) national insurance producer database, otherwise known as the National Insurance Producer Registry. *See*, 15 U.S.C. § 8201, *et seq.*

A nonresident person who sells, solicits or negotiates a surplus line insurance contract for commercial property and casualty risks primarily located in another state,

where that person is properly licensed as a producer and the policy covers commercial property and casualty risks in Idaho, does not need to be licensed as an Idaho surplus line broker. *See*, Idaho Code § 41-1005(2)(f).

Where a diligent search is not required, Idaho allows a nonresident person to apply for a surplus line broker's license without obtaining the underlying Idaho producer's license, as explained below.

WHEN IS A DILIGENT SEARCH REQUIRED OR NOT REQUIRED?

The full amount or kind of insurance required must not be procurable from insurers who are authorized to do business in Idaho. The amount of insurance on risks located in Idaho exported shall only be the excess over the amount procurable from authorized insurers in Idaho unless the excess is not available without support from other coverages—provided that a **diligent search** is completed among insurers authorized in Idaho to transact and actually write that particular kind and class of insurance. *See*, Idaho Code § 41-1214(4).

Exempt Commercial Purchaser. On and after July 1, 2011, a surplus line 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 that the broker procure or place such insurance from a nonadmitted insurer.

Except for the “exempt commercial purchaser” as noted above, all other diligent search requirements under Idaho law remain in force. *See*, IDAPA 18.01.18.004.03.

Export List. The Director has published a list of classes of insurance coverage or risks eligible for export where he has found there is no reasonable or adequate market among authorized insurers in Idaho. *See*, Idaho Code § 41-1216. The “export list” as authorized by the Director is published at IDAPA Rule 18.01.18. Insurance written in those classes or risks as provided on the “export list” need not comply with sections 41-1214(2), 41-1214(3) and 41-1215, Idaho Code, but must comply with all other requirements of the Idaho Code. Insurance written on those classes or risks **not** listed in the “export list” are to be carefully processed to assure all concerned that the intent of sections 41-1214 and 41-1215, Idaho Code, have been fully satisfied along with compliance with all other requirements of the Idaho Code. IDAPA Rule 18.01.18.

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. § 8201, *et seq.* For nonadmitted insurers domiciled in a U.S. jurisdiction, a broker is only permitted to place nonadmitted insurance with such insurers provided that said insurers:

- (1) are authorized to write such business in their state of domicile and maintain the minimum capital and surplus requirements under Idaho law or \$15,000,000, whichever is greater [*See*, Idaho Code § 41-1214(6)]; and
- (2) are on the “White List” as provided by law. [*See*, Idaho Code § 41-1217 and IDAPA 18.01.65.021.]

For nonadmitted insurers domiciled *outside the United States*, a broker may place business with such insurers provided the insurers are listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.¹

WHAT ARE THE KEY DEFINITIONS FROM IDAHO LAW AND THE NRRA?

Idaho Code § 41-1213(5) defines the term “exempt commercial purchaser” as follows:

- (a) “Exempt commercial purchaser” means any person purchasing commercial insurance who, at the time of placement, meets the following requirements:
 - (i) The person employs or retains a qualified risk manager to negotiate insurance coverage.
 - (ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand (\$100,000) in the immediately preceding twelve (12) months.
 - (iii) The person meets at least one (1) of the following criteria:
 1. The person possesses a net worth in excess of twenty million dollars (\$20,000,000) as such amount is adjusted pursuant to the provisions of paragraph (b) of this subsection.
 2. The person generates annual revenues in excess of fifty million dollars (\$50,000,000) as such amount is adjusted pursuant to the provisions of paragraph (b) of this subsection.
 3. The person employs more than five hundred (500) full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand (1,000) employees in the aggregate.
 4. The person is a nonprofit organization or public entity generating annual budgeted expenditures of at least thirty

¹ Sentence was revised in April 2012

million dollars (\$30,000,000) as such amount is adjusted pursuant to the provisions of paragraph (b) of this subsection.

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

(b) The amounts provided in subparagraph (iii) 1., 2., and 4. of paragraph (a) of this subsection must be adjusted to reflect the percentage change for the five (5) year period in the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor.

Idaho Code § 41-1213(5). *See, also*, 15 U.S.C. § 8201, *et seq.*

Idaho Code § 41-1213(7) defines the term “home state” as follows:

(7)(a) “Home state” means:

(i) 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

(ii) If one hundred percent (100%) of the insured risk is located out of state, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

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

(c) For the purposes of this subsection, “principal place of business” means the state where the insured maintains its headquarters and where the insured’s high level officers direct, control and coordinate the business activities of the insured.

Idaho Code § 41-1213(7). *See, also*, 15 U.S.C. § 8201, *et seq.*

Idaho Code § 41-1213(8) defines the term “qualified risk manager” as follows:

(8) “Qualified risk manager” means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(a) The person is an employee of, or a third party consultant retained by, the commercial policyholder;

(b) The person provides skilled services in loss prevention, loss reduction or risk and insurance coverage analysis, and purchase of insurance; and

(c) The person:

(i) Has at least ten (10) years of experience in risk financing, claim administration, loss prevention, risk and insurance coverage analysis or purchasing commercial lines of insurance; or

(ii) 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 director or other state regulatory official or entity to demonstrate minimum competence in risk management; or

(iii) Has at least seven (7) years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis or purchasing commercial lines of insurance and has one (1) of the designations specified in subparagraph (iv)1. through 5. of this paragraph; or

(iv) Has a bachelor's degree or higher education from an accredited college or university in risk management, business administration, finance, economics or any other field determined by a state insurance director or other state regulatory official or entity to demonstrate minimum competency in risk management; and either has three (3) years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis or purchasing commercial lines of insurance, or has one (1) of the following designations:

1. A designation as a chartered property and casualty underwriter (CPCU) issued by the American institute for CPCU and insurance institute of America;
2. A designation as an associate in risk management (ARM) issued by the American institute for CPCU and insurance institute of America;
3. A designation as a certified risk manager (CRM) issued by the national alliance for insurance education and research;
4. A designation as a RIMS fellow (RF) issued by the global risk management institute; or
5. Any other designation, certification or license determined by a state insurance director or other state insurance regulatory official or entity to demonstrate minimum competency in risk management.

Idaho Code § 41-1213(8). *See, also*, 15 U.S.C. § 8201, *et seq.*

Other general terms applicable here are defined as follows:

“Independently procured insurance” means insurance procured directly by an insured from a nonadmitted insurer. *See*, Idaho Code §§ 41-1218 and 41-1233. *See, also*, 15 U.S.C. § 8201, *et seq.*

“Nonadmitted insurance” means any property and casualty insurance permitted to be placed directly or through a surplus line broker with a nonadmitted insurer eligible to accept such insurance. *See*, 15 U.S.C. § 8201, *et seq.*

“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. *See*, 15 U.S.C. § 8201, *et seq.*

“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. *See*, 15 U.S.C. § 8201, *et seq.* *See, also*, Idaho Code § 41-1229.

“Surplus line broker” means “a surplus line broker duly licensed as such under this chapter, including resident surplus line brokers and nonresident surplus line brokers.” Idaho Code § 41-1213(3).