

**Vermont Department of Banking, Insurance, Securities
and Health Care Administration**

Insurance Division Bulletin 163

Nonadmitted Insurance Reform Bulletin

TO: All insurers eligible to write nonadmitted insurance in Vermont, all licensed surplus lines brokers, and all insureds independently procuring nonadmitted insurance.

FROM: Stephen W. Kimbell, Commissioner

DATE: July 21, 2011

RE: Implementation of Federal Nonadmitted and Reinsurance Reform Act in Vermont

The purpose of this bulletin is to outline nationwide regulatory changes that will affect the placement of nonadmitted insurance in Vermont. 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).

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 shall be 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. 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?

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

If more than one insured from an affiliate group are named insureds on a single nonadmitted insurance placement, Vermont will be considered the Home State for that placement if Vermont 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 Vermont and other jurisdictions, as applicable, as of the policy effective date. The laws and regulations of Vermont 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 Vermont if Vermont is the Home State of the insured.

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

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 Vermont 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 Vermont begins participating in a tax sharing arrangement. *See* 8 V.S.A. Chapter 138A. Until additional bulletins are issued, the Vermont tax rate of three percent should be applied to new and renewal policies with an effective date on or after July 21, 2011, when Vermont is the insured's Home State. *See* 8 V.S.A. § 5035.

On or before the end of each month next following each calendar quarter, each surplus lines broker shall file with the commissioner a verified report of all surplus lines insurance transacted during the preceding calendar quarter. A copy of the form to submit such report is available at www.vermontinsuranceagent.info.

At the time of filing his or her quarterly report with commissioner, each surplus lines broker shall file a duplicate report and remit the premium tax due thereon to the commissioner of taxes.

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 Vermont is the insured’s Home State, the surplus lines broker must be licensed in Vermont.

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

Insurance coverage, except as provided below, shall not be placed with a nonadmitted insurer unless the full amount of insurance required is not reasonably procurable from admitted insurers actually transacting that kind and class of insurance in this state; and the amount of insurance exported shall be only the excess over the amount procurable from admitted insurers actually transacting and insuring that kind and class of insurance.

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 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. *See* 8 V.S.A. § 5024(c). “Exempt commercial purchaser” is defined in 15 U.S.C. § 8206(5).

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.

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.

Dated at Montpelier, Vermont, this 21st day of July, 2011.

STEPHEN W. KIMBELL, Commissioner