BULLETIN NO. 2011-01

TO: ALL INSURERS, BROKERS, PRODUCERS AND OTHERS INVOLVED IN SURPLUS LINES OR NONADMITTED INSURANCE IN LOUISIANA

FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE

RE: IMPLEMENTATION OF THE NONADMITTED AND REINSURANCE REFORM ACT WITH RESPECT TO SURPLUS LINES INSURANCE IN LOUISIANA

DATE: JULY 21, 2011


Scope of the NRRA

As stated above, the NRRA assigns regulatory and premium tax jurisdiction to the home state of the insured as defined in the NRRA. 15 U.S.C. §§ 8201(a) and 8202(a). The term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa. 15 U.S.C. § 8206(16).

The term "nonadmitted insurer"—(A) means, with respect to a State, an insurer not licensed to engage in the business of insurance in such 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 (15 U.S.C. 3901(a)(4)). 15 U.S.C. § 8206(11).

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. 15 U.S.C. § 8206(9). Louisiana law designates nonadmitted or approved unauthorized insurance as surplus lines. LSA-R.S. 22:432. As used throughout Bulletin 2011-01, surplus lines shall mean nonadmitted and/or approved unauthorized insurance.
The NRRA makes surplus lines insurance subject to the statutory and regulatory requirements solely of the insured's home state. However, the NRRA does not preempt any state law, rule, or regulation that restricts the procurement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans from a surplus lines insurer. 15 U.S.C. § 8202. In Louisiana, LSA-R.S. 23:1161 governs the procurement of surplus lines insurance for workers' compensation in certain circumstances. With regard to surplus lines insurance policies for which the home state of the insured is Louisiana, a surplus lines broker may only place a surplus lines insurance policy with a foreign or alien surplus lines insurer that is on the Louisiana list of approved unauthorized insurers (commonly referred to as the white list).

Subject to the NRRA, Louisiana will continue to maintain the above referenced list of approved unauthorized insurers (white list). All surplus lines insurers must file with the LDI an application verifying eligibility as a surplus lines insurer. Foreign surplus lines insurers must include a certificate of compliance from its domiciliary state which clearly indicates the line or lines of insurance that the applicant is authorized to write in its domiciliary state, evidence of satisfaction of the capital and surplus requirements of the NRRA, and appropriate contact information. Alien surplus lines insurers must include a copy of the letter that advised the insurer that it has been placed on the NAIC Quarterly Listing of Alien Insurers, and appropriate contact information.

The NRRA does not change the kinds of insurance that an insurer may write in the surplus lines insurance market and each state continues to determine the kinds of insurance, whether admitted or surplus lines, that an insurer may write in that state. Although the NRRA preempts certain state laws with respect to surplus lines insurance, the NRRA does not affect insurance written on Louisiana properties, risks, or exposures by insurers admitted in Louisiana.

**The Home State of the Insured**

Louisiana is the insured's home state if the insured's principal place of business is in Louisiana, or, in the case of a natural person, the insured's principal residence is in Louisiana. If Louisiana is the insured's home state, only Louisiana's requirements regarding the procurement of surplus lines insurance will apply. If Louisiana is the principal place of business or residence and 100% of the insured properties, risks, or exposures are outside of Louisiana, the insured's home state is the state that receives the greatest allocation of the insured's taxable premium for that surplus lines insurance contract. The NRRA defines "home state" at 15 U.S.C. § 8206(6).

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; or (b) if 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 affiliated group are the named insureds on a
single surplus lines insurance contract, Louisiana will be the home state for that
contract if Louisiana is the principal place of business of the member of the
affiliated group that has the largest percentage of premium attributed to it under
such surplus lines insurance contract.

Applicability

The laws and regulations of Louisiana and other applicable jurisdictions will apply
to new and renewal surplus lines insurance policies with an effective date prior to
July 21, 2011 and to any modification to such policies during the policy period,
such as all endorsements (including risk-bearing and premium-bearing
endorsements), installment payments and premium audits. The laws and
regulations of Louisiana will apply to new and renewal surplus lines insurance
policies with an effective date on or after July 21, 2011, and any modifications
thereto, if Louisiana is the home state of the insured.

Premium Tax Allocation and Payment

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

On and after July 21, 2011, the NRRA permits only the insured’s home state to
require the payment of premium tax for surplus lines insurance. There will be no
change to the current surplus lines tax rate, forms, and procedures for single-
state policies covering properties, risk, or exposures only located in Louisiana.
Until July 21, 2011, the laws and regulations of Louisiana and other jurisdictions, as applicable, will continue to apply to premium tax due on multi-state policies.

On July 1, 2011, Louisiana entered the Nonadmitted Insurance Multi-State Agreement (NIMA) pursuant to Acts 2011, No. 361 which amended and reenacted LSA-R.S. 22:439, so that Louisiana will participate in the NIMA tax sharing arrangement for multi-state surplus lines insurance policies. The Louisiana Department of Insurance will prescribe tax forms that conform to the requirements of the recently enacted changes to LSA-R.S. 22:439 and NIMA. For the period of July 1-20, 2011, there will be no tax sharing arrangement and Louisiana will only collect surplus lines premium taxes on the Louisiana portion of multi-state premiums for which Louisiana is the home state of the policyholder.

The recently enacted amendments to LSA-R.S. 22:439, effective July 1, 2011, change the tax formula on multi-state surplus lines insurance policies to conform to the requirements of the NRRA and to facilitate a tax sharing arrangement. The tax required shall be on the gross premiums charged for any surplus lines insurance policy covering properties, risks, or exposures in more than one state and for which Louisiana is the home state of the insured. The surplus lines broker or independently procuring insured shall compute the sum payable based upon all of the following:

1. An amount equal to five percent (5%) on that portion of the gross premiums allocated to this state.

2. Plus an amount equal to the portion of the premiums allocated to other states or territories on the basis of the tax rates and fees applicable to properties, risks, or exposures located or to be performed in other states and territories that participate in a reciprocal allocation procedure as authorized herein.

3. Less the amount of gross premiums allocated to this state and returned to the insured.

4. Less the net premium tax collected on properties, risks, or exposures allocable to states or territories that do not participate in a reciprocal allocation procedure with this state.

License Requirements for Brokers

Only the insured's home state may require a surplus lines broker to possess a license to sell, solicit or negotiate surplus lines insurance with respect to a particular policy. 15 U.S.C. 8202(a) & (b). The term “surplus lines broker” means an individual, firm, or corporation which 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). If Louisiana is the
insured’s home state, the surplus lines broker must possess a Louisiana surplus lines broker license.

The NRRA provides that Louisiana may not collect licensing fees for surplus lines brokers as of July 21, 2012, unless Louisiana participates in the NAIC’s national insurance producer database or any other equivalent uniform national database. 15 U.S.C. § 8203. Louisiana is a participant in the National Insurance Producer Registry (NIPR), which provides such a database, such that Louisiana will collect licensing fees for surplus lines brokers who operate in Louisiana.

Diligent Search; Exemption

There continues to exist in Louisiana the requirement that an insurance producer conduct a diligent search among the admitted insurers authorized to transact business and that are actually writing the particular kind of insurance in this state prior to placing coverage with a surplus lines insurer, except as noted below. LSA-R.S. 22:453(A) (3).

On or after July 21, 2011, a surplus lines broker seeking to procure surplus lines 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 surplus lines broker to procure insurance from a surplus lines insurer. 15 U.S.C. 8205. The NRRA defines exempt commercial purchaser. 15 U.S.C. 8206(5).

Eligibility Requirements for Surplus Lines Insurers

The NRRA restricts the eligibility requirements a state may impose on a surplus lines insurer. A surplus lines broker may place surplus lines insurance with an insurer domiciled in a U.S. jurisdiction authorized to write such business in the state of domicile and that maintains minimum capital and surplus of $15 million. Pursuant to the NRRA, a surplus lines broker may place business with a surplus lines insurer domiciled outside the U.S. when such insurer is on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC. 15 U.S.C. § 8204.

With regard to Bulletin 2011-01, any questions regarding a surplus lines insurance tax issue should be directed to the Assistant Director, Surplus Lines/Insurance Premium Taxes, Office of Financial Solvency, Louisiana Department of Insurance at (225) 342-1012 or any questions regarding a surplus lines insurer licensing issue should be directed to the Assistant Commissioner,
Office of Licensing and Compliance, Louisiana Department of Insurance at (225) 342-1252.

Baton Rouge, Louisiana, this 21st day of July, 2011.

JAMES J. DONELON
COMMISSIONER OF INSURANCE