



Oregon
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OREGON INSURANCE DIVISION BULLETIN INS 2011-1

TO: All Surplus Lines Licensees

RE: House Bill 2679 - Implementation of the Federal Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA")

The purpose of this bulletin is to outline nationwide regulatory changes that will affect the placement of nonadmitted insurance in Oregon. The NRRA (15 U.S.C. § 8201 *et seq.*) is included as one of the subtitles in the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, and provides that only an insured's "Home State", as defined in 15 U.S.C. § 8206(6), 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 licensee 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). A copy of the NRRA may be found on the Surplus Line Association of Oregon Web site, www.slaor.org.

The Oregon Legislature passed House Bill 2679 (2011 Legislative Session) which conforms Oregon law to the NRRA and makes other changes to Oregon's surplus lines law. The effective date of HB 2679 is January 1, 2012. The Insurance Division will set forth the changes made to Oregon law by HB 2679 later in 2011. In the meantime, the NRRA preempts Oregon surplus lines law in certain areas, which are outlined in this communication.

The NRRA becomes effective on July 21, 2011. The following information relates to new and renewal nonadmitted insurance policies with an effective date on or after July 21, 2011.

What is the scope of the NRRA?

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 Oregon laws with respect to nonadmitted insurance, it does not have any impact on insurance offered by insurers authorized in this state.

What is the insured's Home State for purposes of a particular placement?

Oregon 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 Oregon is considered the insured's Home State, only Oregon's requirements regarding the placement of such business will apply. If 100% of the insured risk is located outside of Oregon, then the insured's Home State is the state to which the greatest percentage of the insured's taxable premium for that insurance policy is allocated.

If more than one insured from an affiliate group are named insureds on a single nonadmitted insurance policy, Oregon will be considered the Home State for that policy if Oregon is the Home State of the member of the affiliated group that has the largest percentage of premium attributed to it under that insurance policy.

How will these regulatory changes be applied to new and renewal policies?

New and renewal policies with an effective date prior to July 21, 2011, will continue to be subject to the laws and regulations of Oregon and other jurisdictions, as applicable, as of the policy effective date. These laws and regulations 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 to the laws and regulations of Oregon only if Oregon is the Home State of the insured.

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

Until July 21, 2011, the laws and regulations of Oregon and other jurisdictions, as applicable, will continue to apply to premium tax due on multi-state policies.

As of July 21, 2011, the NRRA permits only the insured's Home State to require the payment of premium tax for nonadmitted insurance. Therefore, for new and renewal policies with an effective date on or after July 21, 2011, the Oregon tax rate should be applied to the portion of premium that represents the Oregon exposure when the insured's Home State is Oregon. This will continue to be the case until January 1, 2012, when HB 2679 becomes effective.

Beginning July 21, 2011, the surplus lines licensee will be required to provide allocation information on multi-state policies where Oregon is the Home State. The allocation information is to include the total policy premium, the basis used for allocation, and the percent and dollar amount (by coverage) allocated to Oregon and the other states. Forms for filing the allocation data will be included in the information required to be filed with the Surplus Line Association of Oregon.

What are the license requirements for surplus lines licensees?

Only the insured's Home State may require a surplus lines licensee to be licensed to sell, solicit or negotiate nonadmitted insurance with respect to a particular placement. If Oregon is the insured's Home State, the surplus lines licensee must be licensed in Oregon.

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

Before placing coverage with a nonadmitted insurer, an insurance producer must conduct a diligent search to see if coverage is available through an admitted insurer. The diligent search should be made of admitted insurers that are actually writing the particular kind and class of insurance in Oregon. A standardized diligent search statement, signed by the insurance producer, shall be filed by the surplus lines licensee within 90 days after placing any surplus lines insurance in Oregon.

The NRRA provides an exception to the diligent search requirement for an insured that qualifies as an “exempt commercial purchaser”, as defined in 15 U.S.C. § 8206(5). On or after July 21, 2011, an insurance producer or surplus lines licensee 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 insurance producer or surplus lines licensee 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 insurance producer or surplus lines licensee procure or place such insurance from a nonadmitted insurer.

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 surplus lines licensee is permitted to place nonadmitted insurance with such insurers provided the insurer is authorized to write such business in their state of domicile and maintains minimum capital and surplus of \$15 million.

For nonadmitted insurers domiciled outside the U.S., a surplus lines licensee 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 National Association of Insurance Commissioners.

What are some of the key definitions from the NRRA?

The NRRA includes several definitions relevant to Oregon’s implementation of its requirements. Key definitions include the following:

- “**Exempt commercial purchaser**”: The term “exempt commercial purchaser” means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

- (A) The person employs or retains a qualified risk manager to negotiate insurance coverage.
- (B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months.
- (C) (i) The person meets at least 1 of the following criteria:
 - (I) The person possesses a net worth in excess of \$20,000,000, as such amount is adjusted pursuant to clause (ii).
 - (II) The person generates annual revenues in excess of \$50,000,000, as such amount is adjusted pursuant to clause (ii).

(III) 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.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000, as such amount is adjusted pursuant to clause (ii).

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

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this subtitle and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such 5-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”**:

(A) In General.—Except as provided in subparagraph (B), the term “Home State” means, with respect to an insured—

(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 100 percent of the insured risk is located out of the state referred to in clause (i), the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) Affiliated Groups.—If more than 1 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 (A), 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).

- **“Qualified risk manager”**: The term “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 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.

(C) The person—

(i) (I) 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 insurance commissioner or other state regulatory official or entity to demonstrate minimum competence in risk management; and

(II) (aa) has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(bb) has—

(AA) 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;

- (BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;
- (CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;
- (DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or
- (EE) 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;
- (ii) (I) has at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and
(II) has any 1 of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);
- (iii) 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
- (iv) 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).

If you have any questions about this bulletin, you may contact:

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This bulletin takes effect immediately.

Dated this 11th day of July 2011 at Salem, Oregon.

Teresa D. Miller, Administrator
Oregon Insurance Division