



COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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JOSEPH G. MURPHY
COMMISSIONER OF INSURANCE

Date: December 14, 2011

To: All Surplus Lines Special Brokers

Re: Changes to Surplus Lines Premium Fee Reporting Procedures

*****SURPLUS LINES SPECIAL BROKERS*****

*****NOTICE REGARDING CHANGES TO SURPLUS LINES PREMIUM FEE
REPORTING PROCEDURES*****

The Nonadmitted and Reinsurance Reform Act of 2010 (“NRRA”), 15 U.S.C. § 8201 *et seq.*, became effective on July 21, 2011. In anticipation of the NRRA effective date, Massachusetts enacted amendments to its surplus lines law, M.G.L. c. 175, § 168, on July 1, 2011. The purpose of this notice is to remind surplus lines special brokers of the Massachusetts Division of Insurance’s (“Division”) new surplus lines premium fee reporting procedures effective as of July 21, 2011.

The NRRA states that “[n]o State other than the home state of an insured may require any premium tax payment for nonadmitted insurance.” 15 U.S.C. § 8201(a). Massachusetts 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. *See* 15 U.S.C. § 8206 (6)(A) and M.G.L. c. 175, § 168 (a). If Massachusetts is considered the insured’s Home State, only Massachusetts requirements regarding the placement of such business will apply. If 100% of the insured risk is located outside of Massachusetts, 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 id.*

If more than one insured from an affiliate group are named insureds on a single nonadmitted insurance placement, Massachusetts will be considered the Home State for that placement if Massachusetts 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. *See* 15 U.S.C. § 8206 (6)(B).

For the purposes of payment of surplus lines premium fees for 2011, new and renewal policies with an effective date prior to July 21, 2011 will be subject to the laws and regulations of Massachusetts and other jurisdictions, as applicable, as of the policy effective date. The laws and regulations of Massachusetts and other jurisdictions, as applicable, as of the effective date of such 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 Massachusetts if Massachusetts is the Home State of the insured.

It is the intent of the Division to issue additional notices if and when Massachusetts begins participating in a tax sharing agreement. *See* M.G.L. c. 175, § 168 (e). Until additional notice has been provided, when Massachusetts is the insured's Home State, Massachusetts surplus lines premium fees for new and renewal policies with an effective date on or after July 21, 2011 should be calculated as follows:

(1) if the insurance covers properties, risks or exposures located or to be performed in the Commonwealth and not in any other state, an amount equal to 4 per cent of such gross premiums;

(2) if the insurance covers properties, risks or exposures located or to be performed both in and outside of the Commonwealth: (i) an amount equal to 4 per cent of such gross premiums allocated to the Commonwealth; plus (ii) 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 outside of the Commonwealth; and

(3) to the extent that other states where portions of the insured properties, risks or exposures are located have failed to enter into a compact or reciprocal allocation procedure with the Commonwealth, the net premium tax collected shall be retained by the Commonwealth.

On or before the end of each January every special insurance broker shall file a sworn statement with the Division providing gross premium charged for insurance procured or placed and the gross return premiums on such insurance cancelled under such license during the year ending on December 31 last preceding. At the time of filing his or her sworn statement, each special insurance broker shall remit the surplus lines premium fee thereon to the Division.

Additional instructions, forms and guidance related to surplus lines premium fee reporting are available at www.mass.gov/doi.

If you have any questions regarding this notice, please contact Frank Pesco, Senior Examiner – Surplus Lines Audit at 617-521-7415.