



NAPSLO Guiding Principles

Uniformity in State Surplus Lines Regulatory Requirements

Uniformity and reciprocity among and between the states in areas of producer licensing and taxation are desirable. The adoption of such truly national standards could be a positive step in improving the efficiency and effectiveness of the state regulatory system. However, no federal standard should be enacted that curtails, hinders or otherwise prevents the surplus lines market from performing its vital role as a supplemental market for insurance consumers.

The surplus lines marketplace has proven to be an essential part of the national insurance market. It operates successfully in the state-based regulatory system where business is exported from one state to another. NAPSLO favors the continuation of a state-based regulatory system for insurance over a federal system. However, the current state-based system must become more uniform and efficient.

Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA)

NAPSLO is dedicated to preserving the intent and clear mandates of the NRRRA and the resulting uniformity and efficiencies in surplus lines regulation the NRRRA was intended to achieve. Since its passage, the NRRRA's national framework and establishment of home state regulation and taxation of surplus lines has produced tremendous benefits for our industry by ensuring one state, the home state of the insured, governs multistate risks. The "home state" approach brings efficiency, clarity and uniformity to the regulation and taxation of surplus lines insurance by creating a modern and efficient regulatory framework.

In passing the NRRRA, Congress sought to achieve a simpler and more efficient system of regulation and taxation of the surplus lines industry by establishing the insured's "home state" as the one and only jurisdiction to regulate and tax surplus lines transactions. Congress also clearly expressed its intent that states establish a uniform, nationwide approach to the regulation and taxation of the surplus lines industry. NAPSLO believes that there are opportunities for the states to bring about the full spectrum of uniformity and efficiency envisioned by Congress.

NAPSLO therefore encourages all states to adopt uniform procedures for the regulation and taxation of surplus lines brokers and insurers.

Home State Tax Collection

NAPSLO strongly supports the home state taxation of the surplus lines market. All states should adopt the NRRRA definition of home state¹. The adoption of a definition of home state that conflicts with the NRRRA results in less uniformity and inevitably leads to disagreements among the states over which is the insured's home state.

The home state approach has significantly simplified and improved the regulatory and tax compliance process for our industry. The home state reform has been successful in dramatically improving the premium tax payment process and reducing the cost of surplus lines compliance within the state based regulatory system.

A majority of the states (46) collect and retain 100% of the surplus lines premium tax as the home state of the insured. All states should

tax 100% of the surplus lines premium on a policy at their home state rate, including any premium allocable to U.S. risks located outside the home state, and retain 100% of the taxes they collect. NAPSLO believes this is the only viable and uniform national solution.

Tax Payment Dates

NAPSLO supports uniformity amongst the states regarding tax payment dates. NAPSLO members spend significant resources to comply with varying state requirements for payment of taxes. Increased cost of compliance adds additional costs to policyholders under their policies. NAPSLO believes uniform tax dates would be appropriate on the first day of March, June, September or December. States may choose an annual, biannual or quarterly requirement but should be limited to these four potential dates throughout the year. States may require estimated quarterly tax payment for three dates and a "true up" on the fourth date. While decreasing costs to policyholders, this simple uniform approach would in no way decrease the sufficiency or timely delivery of desired information to the various states.

Uniform Definition of Taxable Premium

The NRRRA encourages the states to adopt uniform procedures and requirements regarding surplus lines premium taxes. Currently, states have individual definitions and requirements that define what taxable premium is for purposes of the broker calculating surplus lines premium tax. States should adopt one uniform definition for determining taxable premium so taxes are calculated and treated the same in each state in a uniform manner consistent with the intention of the NRRRA.

Broker Fees

States should allow reasonable broker fees in the placement of surplus lines policies. Surplus lines placements are often unique and require additional work initially and throughout the policy period. Broker fees are not consideration for the policy and should be excluded from premium for tax calculation purposes.

Zero Reports Requirements

The NRRRA “home state” approach clarifies that only one state can require a tax payment, and surplus lines brokers must identify a home state for every policy and remit the taxes to that state. This simplified home state requirement means that “zero reports” are obsolete, because the pre-NRRRA system requiring the broker to remit a portion of the tax to each exposure state has now been eliminated. Further, NAPSLO believes existing state requirements to file a “zero report” create unnecessary work for surplus lines brokers with no apparent benefit to the industry or regulatory community. For these reasons, NAPSLO believes “zero report” requirements should be eliminated.

Electronic Filing

Electronic filing offers efficiency and consistency for both the state and the surplus lines broker. It increases the timeliness of transactional reporting for states and reduces costly errors. NAPSLO members encourage states to accept all required reports and filings electronically.

Uniform Forms and Reports

NAPSLO members direct considerable resources to complying with varying state reporting format requirements. Additionally, information to be included in the required reports is not uniform. States should adopt one uniform form and report for use by all states for surplus lines premium tax with the same data requirements applied uniformly for all states. All states should allow electronic filing but in states unable to immediately implement electronic filing, the electronic and hard-copy form should be the same.

Carrier/Broker Reconciliation

The NRRRA directs the taxation of all surplus lines premium to the home state of the insured where the full amount of tax paid can be directly and effectively audited by the state. States should rely on broker filings, with brokers remitting 100% of the tax to the home state on 100% of the premium for the home state of the insured. Additional auditing and comparisons of broker and carrier information is unnecessary.

Uniform Notice to Insureds

Most states require a surplus lines notice to be sent to the insured, indicating the insured has purchased a surplus lines policy, that it is not covered by a guaranty fund and to contact the Department

of Insurance or the broker for questions or concerns. The required information and presentation in the notice varies from state to state. NAPSLO supports the adoption of one uniform notice to the insured. NAPSLO suggests the uniform notice to insureds should be provided at the time of delivery of the policy and as a separate document attached to the policy. The notice should state:

An insurer that is not licensed in this state is issuing the insurance policy that you have applied to purchase. Although the insurer is not licensed in this State, it is permitted to be placed with the “nonadmitted” or “surplus lines” insurer. The insurer is not subject to the financial solvency regulation and enforcement that applies to licensed insurers in this state. These insurers generally do not participate in insurance guaranty funds created by state law. These guaranty funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised. For additional information about the above matters and about the insurer, you should ask questions of your insurance general agent, broker or surplus lines broker. You may also contact your insurance department consumer help line.

Insurer Eligibility

The NRRRA clearly defines criteria for carrier eligibility compliance requirements. States should not impose additional requirements beyond the NRRRA. States that exceed the NRRRA requirements should change their practice in accordance with the NRRRA.

The NAPSLO membership benefits from strong carrier solvency. NAPSLO therefore supports strong solvency review by domiciliary states for U.S. domestic surplus lines carriers and by the NAIC International Insurers Department and its members for non-U.S. surplus lines carriers. However, states implementing voluntary listings with additional solvency review should be limited to information readily available through the domiciliary state or NAIC database. No additional information beyond data collected for domiciliary state solvency regulation should be required.

U.S. domestic and non-U.S. carriers should have the same standard for doing business and demonstrate strong solvency history so as to support a strong surplus lines industry. U.S. insureds purchasing surplus lines coverage should feel confident in the strength and solvency of the surplus lines market.

¹Section 527 of the NRRRA defines home state as:

(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.