

STATE OF NEBRASKA

DEPARTMENT OF INSURANCE

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Director



Dave Heineman
Governor

April 1, 2013
CB-50 (Amended)

BULLETIN

SUBJECT: AMENDED FILING PROCEDURES FOR PROPERTY AND CASUALTY INSURANCE COMPANIES

This bulletin provides information regarding the preparation of filings for compliance with the procedures of the Nebraska Department of Insurance.

The Rate and Form Act has had various changes allowing an easier and faster means of revising existing programs as well as getting new programs into the marketplace. With certain exceptions—primarily workers' compensation forms and medical professional liability forms and rates—Nebraska is "file and use" for both rates and forms for the majority of commercial and personal lines.

All filings submitted to Nebraska are required to be submitted through SERFF. The one exception to the requirement is applicable to carriers that have a Certificate of Authority to do business only in Nebraska. Filings need to be submitted using the Type of Insurance (TOI) code that has been established by SERFF.

The attached Filings Manual for Nebraska Property and Casualty Insurance Lines, with a revision date of April 2013, should be provided to all company personnel responsible for submitting filings to the Department.

Questions regarding this manual may be directed to the Department's Property/Casualty Division.



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Nebraska Filings Manual
for
Property and Casualty Insurance Lines

Nebraska Department of Insurance

CB-50 (Amended)
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1. Introduction

This manual has been prepared to identify property and casualty forms and rates that must be filed, and to specify information that must be filed in support of these filings. It is intended to help identify the information necessary to expedite and complete the review of a filing. It is suggested that all persons responsible for filings in Nebraska be familiar with and have access to a copy of this manual.

Section numbers in parentheses following instructions refer to Nebraska statutes. Copies of these statutes are available at www.nebraskalegislature.gov

2. Submission Instructions

- All filings submitted to the Department are to be submitted through SERFF.
- Nebraska is a retaliatory fee state—the fee charged will be based on the fee charged by the state of domicile of the company making the filing submission. (§44-150)
- When making rate filings, please include background information (i.e., loss development, trend, market analyses, etc.) necessary to explain and justify the changes being made. (§44-7508)
- When revising currently approved forms or rules, a comparison of the existing form or rule should be included with all changes clearly identified.
- When submitting a new program, or an extensive revision to an existing program, it is preferred that the filing of the rates and forms be made at the same time whenever possible.

3. Prior Approval / File and Use

File and use applies to rates and forms for both personal and commercial lines, with certain exceptions (§44-7506).

- Workers' compensation forms—but not loss cost multipliers and related values—are handled subject to prior approval. This includes large deductible forms and excess workers' compensation forms.

- Medical professional liability rates and forms are subject to prior approval.
- All rate and form filings made by advisory organizations are subject to prior approval.
- Rates and forms for liability and physical damage insurance covering rental of private passenger automobiles on a non-fleet basis are subject to prior approval.
- Rates and forms for insurance written by joint underwriting pools or joint reinsurance pools are subject to prior approval.
- Prior approval applies to insurance covering risks of a personal nature written for business entities if the costs for the insurance are charged to individuals. This does not include those situations where coverage is provided without a separate charge by the business entity for its customers.

4. Policy Form Filings

- An insurer does not need to file forms and endorsements that an advisory organization has filed on its behalf. When an insurer elects to use the wording of a form filed on its behalf by an advisory organization, but reprints the forms using a different logo or form number, the “new” forms thus created also do not need to be filed. However, a record of the company’s renumbered forms and the corresponding advisory organization’s form numbers must be maintained by the company in the event the Department requests that information.
- Certificates of insurance that do not provide coverage for the holder of the certificate, but are merely used to provide evidence that another entity or person has insurance, do not need to be filed.
- Renewal certificates need to be filed. Please make sure that the renewal certificate provides all of the information found on the policy declarations.
- All certificates of insurance used to extend coverage to a person or entity must be filed. For example, “certificates” used in conjunction with “master contracts” to indicate the extension of coverage to individual persons or entities must be filed.

5. Rate Filings

Rate filings **are not** required for the following:

- Rates for limits and classes for which the Department has agreed that “guide” or “Guide (a)” treatment is appropriate do not need to be filed except when an advisory organization promulgates them on an advisory basis. Please note that rate filings must include a list of all limits and classes that are intended for “Guide (a)” treatment. Approval of such lists is not automatic.
- Exemption applies to rates for those inland marine risks that by general custom of the business are not written using rating manuals. Types of inland marine risks for which an advisory organization does not make rates or loss costs are not necessarily exempted from rate filing requirements. Most classes of inland marine insurance that have traditionally been exempted from the filing of manual rates are also exempted in Nebraska, but new classes are not automatically exempted. A current listing of filed and non-filed inland marine classes can be found on the Department’s website at www.doi.ne.gov/pc/guidelin.htm.
- Insurers don’t need to file surety rates or adhere to the rates or loss cost multipliers contained in the manuals that they maintain for internal use. Surety loss costs developed by advisory organizations, however, must be filed for approval.
- Rates for reinsurance contracts are exempt from filing, except as provided in §44-7525 for joint reinsurance pools.
- Rates for financial guaranty insurance as defined in subdivision (19) of §44-201 are exempt from filing, except that filings must be made for financial guaranty coverage that covers the loss of value for motor vehicles leased or sold on credit to private parties.
- Rates for warranties and service contracts do not need to be filed.
- Except as may be developed by advisory organizations, rates or factors applying to excess workers’ compensation insurance—written for approved self-insureds—and so-called large deductible workers’ compensation insurance—written for employers that are not approved self-insureds—do not need to be filed. Workers’ compensation law places limitations upon the writing of large deductible insurance. Detailed approval requirements relating to large deductible workers’ compensation insurance may be found on the Department’s website at www.doi.ne.gov/pc/largeded.pdf.

6. Prior Approval for Rates and Forms

Rates and forms to which prior approval applies cannot be used before they have been filed with and approved by the Nebraska Department of Insurance. Rates may not be inadequate or unfairly discriminatory. There is a 30-day deemer provision that can be extended up to another 30 days upon notification by the Department.

7. File and Use for Rates and Forms

File and use filings must contain an effective date. This effective date can be the same as the day that the Department receives the filing, but not sooner. The Department will review most forms within a reasonable time following their receipt using review standards that are similar in practice to those found in most states. The insurer will be notified if a form that has been filed does not meet statutory standards. The notice will specify why the filing fails to meet requirements.

Upon receipt of a formal notice of disapproval, the insurer must cease use of the form filing as soon as practical, but may use the form for policies that have already been issued or when pending coverage proposals are outstanding. If this disapproval is made within the first 30 days—or longer if correspondence back and forth is involved—then this disapproval can be made without a hearing, but the insurer may appeal. A prior hearing is required for this disapproval to be made past the first 30 days, unless correspondence was ongoing.

If the Department finds that the rates that have been filed do not meet statutory standards, then it will disapprove. This disapproval, however, will only apply after another 30 days.

- **Unfairly Discriminatory Rates** – A very limited standard for unfair discrimination applies for file and use lines of insurance. A filing that attempts to discriminate based on race, ethnic background, religion or against victims of domestic abuse cannot be allowed.
- **Inadequate Rates** – Nebraska has a narrow standard for inadequacy that applies to both prior approval and file and use. For a rate to be considered inadequate, it must be low enough to expect the insurer to lose money on it, even after full consideration of investment income, and it must either (a) be expected to endanger the solvency of the insurer that is charging it, or (b) be expected to significantly diminish competition in the marketplace.

8. Documentation Required With Rate Filings

Companies are required to submit documentation to support any changes made in the rates or loss costs. Certain general principles applicable to the submission of such documentation are as follows:

- Indicate whether data is in a policy year, calendar year or calendar-accident year form.
- Indicate if premiums shown in premium/loss exhibits have been adjusted to current rate levels.
- Indicate if losses have been trended and the amount of trend.
- Indicate whether losses shown include allocated and/or unallocated loss adjustment expense.
- Show development of incurred losses—for policy year and calendar-accident year losses—and show development of earned premiums for policy year premiums.
- Clearly show the requested change versus the indicated change. Provide an adequate explanation when the request differs significantly from the indicated.
- If a company has little data, but is basing a filing upon a perception of the rate levels of its major competitors, provide a listing of these competitors and compare the proposed rates, the company's experience, operations, and expenses.

9. Excess Rates, "Guide (a)" Rates

The Department exempts rates for commercial excess/umbrella policies from filing requirements. It also exempts those classes that it agrees are properly subject to "Guide (a)" treatment from rate filing requirements. This exemption is based upon a provision in the rate and form law that allows the Department to exempt rates where it is not practical to develop meaningful rate manuals. The identification of classes of insurance to which guide rating applies must be approved by the Department. The designation of a class of insurance as "Guide (a)" is not a decision that is allowed on a file and use basis.

10. Consent-to-Rate Procedures

The Department recognizes that some risks represent greater exposures to loss than are contemplated by the company's manual rates. The purpose of these guidelines is to outline procedures that will not discourage the use of this rating mechanism, while still allowing the Department to monitor consent-to-rate activities and initiate inquiries where necessary.

Consent-to-rate only allows policies to be written at higher rates than would otherwise be available through an insurer's filings. If an insurer feels that its filed rates are too high for a specific account, its only recourse is to file lower rates.

For consent-to-rate insureds, the insurer shall develop a statement for the insured's signature that indicates the coverage that is affected, the amount of surcharge being imposed—a percentage, dollar amount or other accurate description—and a description of the unusual characteristics of that policyholder. For most consent-to-rate situations, all that is needed is a brief explanation on the application that states the nature of the risk's deficiencies or unusual exposure(s).

The consent-to-rate form needs to be completed prior to signature by the insured, and no alterations, additions, or deletions may be made after the form has been signed by the insured. Two copies of the consent-to-rate form and a return envelope to which adequate postage has been affixed must be provided to the Department. One copy will be stamped "acknowledged" and returned to the insurer for its records. The Department's copy will be kept confidential.

11. Public Access to Filings

Rate and form filings and their supporting documentation are available for public inspection, subject to the provisions of §§84-712 to 84-712.09. The following exceptions are protected from disclosure:

- Consent-to-rate filings for individual policyholders;
- Credit scoring plans; and
- Filings that have been submitted and have met the appropriate criteria for confidentiality.

The Department provides a list of property/casualty filings that have been completed during the month on its website located at www.doi.nebraska.gov/pc/filings/filing_index.htm. The listing is updated on or about the first of each month.

Filings are available to the public through two public access computers located at the Department. To ensure computer availability, it is suggested that individuals call the Department's Property/Casualty Division and make an appointment prior to coming in to review filings.

12. Common Filing Problems

Following are some of the common problems that could result in a delay in final action being taken on a filing:

Schedule Rating Plans. Nebraska did away with all subjective scheduled rating plans in 2001 (§44-7512). Under most commercial lines of insurance, however, the Department allows a rating flexibility of $\pm 40\%$ (§44-7509). Since the 40% maximum rating flexibility is allowed by statute without a flex-rating filing, it is not permissible to have an additional schedule rating adjustment.

Fail to Remit Filing Fees. Nebraska's statutes do not contain filing fees for forms or rates. However, our laws retaliate if an insurer's state of domicile requires filing fees. A filing submitted without proper filing fees will not be processed.

Failure to Include Justification When Filing Rates. Justification is the most effective way for the Department to judge whether competition is an effective regulator of rates. As long as the rates that insurers file are justified by their experience, the Department can be reasonably confident that competition is working. The absence of any requirement for the filing of justification substantially reduces the ability of people depending on the Department as a source of useful competitive information.

Cancellation Provisions that Fail to Comply with Nebraska Law. Filing cancellation provisions that fail to comply with Nebraska cancellation and nonrenewal laws can occur in several different forms depending on the line of insurance. The most common error is to provide 30 days' notice for property and liability lines that generally require 60 days' notice of cancellation or nonrenewal. Separate provisions apply to automobile insurance and workers' compensation insurance.

Nebraska law does not provide for the delivery of cancellation notices. Cancellation notices must be mailed in accordance with the requirements of each cancellation statute. Most require registered or certified mail.