

## Chapter 73

### EXEMPT COMMERCIAL POLICYHOLDERS

#### 001. Purpose and scope.

001.01 The purpose of this chapter is to implement sections 15 and 16 of LB 1119, passed in the 2000 session of the Nebraska Legislature and codified at Neb.Rev.Stat. §§ 44-7515 and 44-7516, which require the director of insurance to adopt rules that:

- (1) Modify or eliminate requirements for insurers to use filed rates and approved policy forms for commercial lines property and casualty insurance sold to certain commercial policyholders under common ownership; and
- (2) Allow certain exempt commercial policyholders to be exempt from those provisions of Neb.Rev.Stat. §§ 44-5510 and 55-5511 that require, as a condition for the purchase of insurance from a nonadmitted insurer, that the applicant demonstrate an inability to obtain insurance from a licensed insurer.

001.02 This chapter includes rate filing and form approval and surplus lines access exemptions for the lines, types and classes of commercial lines property and casualty insurance filed pursuant to Neb.Rev.Stat. § 44-7508, and workers' compensation insurance, medical professional liability insurance, and insurance covering farms and ranches, including crop insurance.

002. Authority. This Rule is promulgated under the authority vested in the Director by Neb.Rev.Stat. §§ 44-101.01, 44-7515, and 44-7516.

003. Definitions. For the purposes of Chapter 73, the following definitions apply.

03.01 The definitions set forth in Neb.Rev.Stat. § 44-7504 apply for purposes of this chapter.

03.02 "Class RFS policyholder" means an exempt commercial policyholder that fulfills either of the two following sets of conditions:

- (1) (A) The policyholder utilizes the services of a qualifying risk manager;
- (B) The policyholder generates at least \$100,000 in aggregate commercial lines property and casualty insurance premiums per year, and

- (C) The policyholder meets at least two of the following conditions:
  - (i) The policyholder generates aggregate commercial lines property and casualty insurance premiums of at least \$250,000 per year, excluding premiums for workers' compensation and medical professional liability insurance, or generates at least \$1,000,000 aggregate commercial property and casualty insurance premiums per year, including premiums for workers' compensation and medical professional liability insurance.
  - (ii) The policyholder's net worth is at least \$25,000,000.
  - (iii) The policyholder's annual net revenues or sales are at least \$50,000,000.
  - (iv) The policyholder employs at least 250 employees.
  - (v) If the policyholder is a not-for-profit or government entity, the policyholder has an annual operating budget of at least \$25,000,000.
  
- (2) (A) The policyholder generates at least \$100,000 in aggregate commercial lines property and casualty insurance premiums per year for all jurisdictions combined, and
  
- (B) In a jurisdiction that generates greater aggregate commercial property and casualty insurance premiums for the policyholder than Nebraska:
  - (i) No rates for the policyholder are subject to a requirement that the insurer adheres to its rating manuals;
  - (ii) No policy forms for the policyholder, other than policy forms for workers' compensation and automobile liability insurance, are subject to a requirement that the insurer must use filed forms, and
  - (iii) Access to surplus lines markets for other than workers' compensation and automobile liability insurance for the policyholder is not subject to any requirement that such coverage is not available from a licensed insurer.

003.03 “Class RF policyholder” means an exempt commercial policyholder that meets any one of the three following sets of conditions:

- (1) The policyholder utilizes the services of a qualifying risk manager and generates at least \$50,000 in aggregate property and casualty insurance premiums per year.
- (2) The policyholder generates aggregate commercial lines property and casualty insurance premiums of at least \$250,000 per year, excluding premiums for workers’ compensation and medical professional liability insurance, or generates at least \$1,000,000 per year in aggregate property and casualty insurance premiums, including premiums for workers’ compensation and medical professional liability insurance.
- (3) (A) The policyholder generates at least \$50,000 in aggregate commercial lines property and casualty insurance premiums per year for all jurisdictions combined, and  
(B) In a jurisdiction that generates greater aggregate commercial property and casualty insurance premiums for the policyholder than Nebraska:
  - (i) No rates for the policyholder are subject to a requirement that the insurer adhere to its rating manuals, and
  - (ii) No policy forms for the policyholder, other than policy forms for workers’ compensation and automobile liability insurance, are subject to a requirement that the insurer must use filed forms.

003.04 “Class R policyholder” means an exempt commercial policyholder that meets any one of the three following sets of conditions:

- (1) The policyholder utilizes the services of a qualifying risk manager and generates at least \$25,000 in aggregate commercial lines property and casualty insurance premiums per year.
- (2) The policyholder generates aggregate property and casualty insurance premiums of at least \$75,000 per year excluding premiums for medical professional liability insurance, or generates at least \$250,000 in aggregate commercial lines property and casualty insurance premiums per year, including premiums for medical professional liability insurance.
- (3) The policyholder generates at least \$25,000 in aggregate commercial lines property and casualty insurance premiums per year for all jurisdictions combined and, in a jurisdiction that generates greater aggregate

commercial property and casualty insurance premiums for the policyholder than Nebraska, rates for the policyholder are not subject to a requirement that the insurer adheres to its rating manuals.

003.05 “Commercial lines property and casualty insurance” means property and casualty insurance filed pursuant to Neb.Rev.Stat. § 44-7508, and also includes workers’ compensation insurance, medical professional liability insurance, and insurance covering farms and ranches, including crop insurance.

003.06 “Exempt commercial policyholder” means a Class RFS, RF, or R policyholder, as defined by this chapter, that may purchase insurance policies for which specific aspects of rate or policy form regulation do not apply or have been relaxed, or that is exempt from those provisions of §§ 44-5510 and 44-5511 that require, as a condition for the purchase of insurance from a nonadmitted insurer, that applicants demonstrate inability to obtain insurance from a licensed insurer.

003.07 “Qualifying risk manager” means:

- (1) (A) A person that is a full time employee of the policyholder with primary duties consisting of property and casualty risk management and the purchase of insurance, and that meets the qualification standards in paragraph (2); or
  - (B) A person or persons, operating as a contractor that primarily provides risk management services, that devotes at least one hundred twenty hours per year to the policyholder’s risk management and purchase of insurance. No such person shall be an agent for an insurer providing insurance for the policyholder, and shall not receive any compensation from an insurer, or from an agent of an insurer that is providing insurance for the policyholder, or from an agency compensated by the insurer that is providing insurance for the policyholder. Each person whose hours are included in the total hours necessary to meet this requirement is required to meet the qualification standards in paragraph (2).
- (2) Who has demonstrated qualification through:
    - (A) Five or more years of full time experience in property and casualty insurance as a commercial lines underwriter with an insurance company or as an insurance producer dealing primarily with commercial accounts, except that health and employee benefit experience shall not count towards this requirement; or
    - (B) Three years of full-time experience related to property and casualty insurance or risk management and attainment of one of the following insurance professional designations:

- (i) Associate in Risk Management;
- (ii) Certified Risk Manager; or
- (iii) Chartered Property Casualty Underwriter.

003.08 “Workers’ compensation insurance” means workers’ compensation insurance, as defined in Neb.Rev.Stat. § 44-201 (11), and includes insurance written with deductibles. “Workers’ compensation insurance” does not include excess workers’ compensation insurance provided for policyholders that have qualified with the Nebraska Workers’ Compensation Court as approved self-insureds.

004. Exemptions applicable to policies of insurance sold to exempt commercial policyholders.

004.01 Exemptions applicable to Class RFS policyholders.

- (1) As permitted by Neb.Rev.Stat. § 44-7515, an insurer shall not be required to use filed rates and approved policy forms for commercial lines property and casualty insurance policies insuring Class RFS policyholders. The provisions of this chapter regarding the regulation of policy forms shall not apply to an exempt commercial policyholder that is also a qualifying multistate commercial policyholder as defined pursuant to Chapter 75.
- (2) As permitted by Neb.Rev.Stat. § 44-7516, a Class RFS policyholder is exempt from those provisions of §§ 44-5510 and 44-5511 that require, as a condition for the purchase of insurance from a nonadmitted insurer, that applicants demonstrate inability to obtain insurance from a licensed insurer. This exemption shall not apply to workers’ compensation insurance, excess workers’ compensation insurance, or automobile liability insurance. This exemption may apply to automobile liability insurance purchased as excess insurance over a policy that provides limits that are at least equal to the minimum limits of liability required by Neb.Rev.Stat. § 60-534.

004.02 Exemptions applicable to Class RF policyholders. As permitted by Neb.Rev.Stat. § 44-7515, an insurer shall not be required to use filed rates and approved policy forms for commercial lines property and casualty insurance policies insuring Class RF policyholders. The provisions of this chapter regarding the regulation of policy forms shall not apply to an exempt commercial policyholder that is also a qualifying multistate commercial policyholder as defined pursuant to Chapter 75.

004.03 Exemptions applicable to Class R policyholders. As permitted by Neb.Rev.Stat. § 44-7515, an insurer shall not be required to use filed rates for commercial lines property and casualty insurance policies insuring Class R policyholders.

005. Status as an exempt commercial policyholder is optional. An insurer or policyholder that does not desire to avail itself of the provisions of this regulation is not required to make a determination of exempt commercial policyholder status. Such a policyholder shall be accorded the same treatment as a policyholder that does not qualify as an exempt commercial policyholder. In addition, the provisions of this chapter regarding the regulation of policy forms shall not apply to an exempt commercial policyholder that is also a qualifying multistate commercial policyholder as defined pursuant to Chapter 75.

006. Unrelated entities may not be combined to attain exempt commercial policyholder status. Premiums or other attributes for entities that are not under common ownership may not be combined to qualify a policyholder as an exempt commercial policyholder.

007. Premiums used to determine exempt commercial policyholder status.

007.01 Calculation of premium amounts. For purposes of determining whether a policyholder is a Class RF, RFS or R policyholder, premiums shall include all commercial lines property and casualty insurance premiums generated by a policyholder on risks located in Nebraska and elsewhere, without regard to whether such insurance is purchased from one or more insurers. Such premiums shall be those offered by an insurer for the prospective policy term. If an insurer is not offering all of the commercial lines property and casualty insurance that an exempt commercial policyholder is purchasing, premiums for expiring policies for which the insurer is not offering insurance shall be used as the basis for premium determination. If not all policies for a policyholder have a common inception date, premium for policies that are in force as of the inception date of coverage for which the calculation is made shall be used. For policies that the insurer does not write, the insurer shall only use premiums for which policyholder documentation is provided. If an insurer is not provided with policyholder documentation of the premiums for policies that the insurer does not write, then the insurer shall not include premiums for such policies to determine whether a policyholder is a Class RF, RFS, or R policyholder.

007.02 Retrospectively determined premium. For purposes of determining whether a policyholder is a Class RF, RFS or R policyholder, if a policy's premium will be determined retrospectively, then it shall be calculated as if the policyholder were rated on a guaranteed cost basis. Exempt commercial policyholder status shall not be retroactively denied if actual losses incurred under the policy result in an actual premium lower than the estimated premium calculated on a guaranteed cost basis.

007.03 Premium based on auditable exposures. For purposes of determining whether a policyholder is a Class RF, RFS or R policyholder, if a policy's premium is determined based on exposures that are subject to audit as defined in the policy, then it shall be calculated using a good faith estimate of exposures. Exempt commercial policyholder status shall not be retroactively denied if the audited exposures result in a premium that is lower than the estimated premium.

008. Restrictions on rate filing exemptions.

008.01 Nebraska premiums must arise from Nebraska exposures. The Nebraska premiums for each individual policy and for each separately coded exposure under that policy shall be the amounts that most closely correspond with the insurer's evaluation of the expected losses and expenses that will be generated by each exposure and policy. Premiums for Nebraska exposures shall not be discounted or surcharged based on a policyholder's premiums for exposures in another state that are higher or lower than are desired by the insurer.

008.02 Restrictions on permissible discounts. Rate credits for an exempt commercial policyholder may not be used to reduce the policyholder's premium to less than the amount necessary for the policyholder to qualify as an exempt commercial policyholder. Nothing in this subsection shall require reduction of rate credits if the premium for a retrospectively rated policy or for a policy with premium based on auditable exposures is ultimately lower than was originally estimated.

008.03 Restrictions on permissible surcharges. An insurer may not impose a surcharge against a policyholder exceeding the surcharge permissible under Neb.Rev.Stat. § 44-7509, unless the aggregate property and casualty insurance premiums for such policyholder, prior to the application of any surcharge permissible under Neb.Rev.Stat. § 44-7509, exceed the minimum aggregate property and casualty insurance premium threshold to qualify as an exempt commercial policyholder.

008.04 Workers compensation. As required by Neb.Rev.Stat. § 44-7524, every insurer writing workers' compensation shall adhere to the uniform workers' compensation classification system and shall report its workers' compensation experience in accordance with statistical plans and other reporting requirements to ensure that workers' compensation data is combined for all insurers for the development of prospective loss costs and the application of experience rating. This includes the requirement that premiums are determined from audited payrolls instead of being written on a guaranteed cost basis, not subject to audit.

009. Restrictions on form approval exemptions.

009.01 Workers' compensation and excess workers' compensation. As permitted by Neb.Rev.Stat. § 44-7515 (2) and as set forth in Neb.Rev.Stat. § 44-7515 (6), only policy forms and endorsements approved by the director may be used to provide workers' compensation and excess workers' compensation coverage. An insurer may use endorsements that have not been approved by the director for workers' compensation and excess workers' compensation policies if the endorsements only amend policy provisions pertaining to the calculation or remission of premiums. An insurer may not use endorsements that have not been approved if the endorsements amend coverage or alter provisions relating to the administration of claims set forth in policies filed with the director;

009.02 Medical professional liability. As required by Neb.Rev.Stat. § 44-7515 (2), only policy forms and endorsements approved by the director may be used to provide coverage for a policyholder seeking to qualify under the Nebraska Excess Medical Liability Fund;

009.03 Automobile insurance. Insurers may not use automobile insurance policy forms that provide coverage limits less than those required by Nebraska law; and

009.04 Policy forms may not violate laws. Insurers may not use policy forms that violate any law of this state.

010. Statistical reporting. Credits and debits applied pursuant to this chapter shall be reported in the same manner as credits and debits allowed by Neb.Rev.Stat. §44-7509.

011. Continued use of an unapproved policy form for a commercial policyholder that no longer qualifies as a Class RFS or Class RF exempt commercial policyholder. A policyholder may continue to purchase coverage using an unapproved policy form, even though the policyholder no longer qualifies as a Class RFS or Class RF exempt commercial policyholder, if:

- (a) Such policy form was originally agreed to during a period of time for which the policyholder could purchase coverage using policy forms which had not been approved; and
- (b) The policyholder's aggregate commercial property and casualty insurance premiums are at least \$50,000 per year.

012. Continued use of a surplus lines carrier by a commercial policyholder that no longer qualifies as a Class RFS exempt commercial policyholder. A policyholder may continue to renew coverage from a surplus lines insurer without the need to demonstrate that it is unable to obtain that coverage from a licensed insurer, even though the policyholder no longer qualifies as a Class RFS exempt commercial policyholder, if:

- (a) Such coverage was originally purchased from the surplus lines insurer during a period of time for which the policyholder could purchase coverage from a surplus lines insurer without the need to demonstrate that it is unable to obtain insurance from a licensed insurer; and
- (b) The policyholder's aggregate commercial property and casualty insurance premiums are at least \$100,000 per year.

013. Policyholder notification of policy forms that have not been approved by the director. Insurers shall inform exempt commercial policyholders at the earliest practical date, but no later than thirty days after the inception of coverage of those policy forms applying to them that have not been approved by the director.

014. Responsibility to determine exempt commercial policyholder status. The insurer shall obtain a written statement from the policyholder regarding the information necessary to determine the policyholder's status as an exempt commercial policyholder if such status depends on information not already contained in the insurer's files. An insurer is not required to make further inquiry of the policyholder's status unless the information available to the insurer makes it unlikely that the policyholder's representations are accurate.
015. Documentation to be maintained by the insurer. An insurer shall retain documentation supporting an exemption for the time set forth in Neb.Rev.Stat. § 44-5905(2)(b)(i)(B) if the insurer uses rates or policy forms that have not been filed with or approved by the director or places coverage with a surplus lines insurer without demonstrating inability to obtain insurance from an admitted insurer.
016. Severability. If any section or portion of a section of this chapter, or the applicability thereof to any person or circumstance, is held invalid by a court, the remainder of this chapter, or the applicability of such provision to other persons, shall not be affected thereby.
017. Effective date. This chapter shall apply to all property and liability insurance subject to the Property and Casualty Insurance Rate and Form Act with an effective date on or after April 14, 2003.