

August 24, 2005
CB-50 (Amended)

**SUBJECT: AMENDED FILING PROCEDURES FOR PROPERTY AND CASUALTY
INSURANCE COMPANIES**

This bulletin is a P&C rate and forms filings manual that contains forms and instructions for the preparation of filings for compliance with the procedures of the Nebraska Department of Insurance. This bulletin supersedes prior versions of CB-50.

The explanatory material has been substantially revised in response to legislative changes to the Rate and Form Act. The most recent changes to the Act arose from the passage of LB 119 by the 2005 Unicameral. These changes will become effective 9/4/2005. With certain exceptions (primarily workers' compensation forms and medical professional liability forms and rates), Nebraska will now be "file and use" for both commercial and personal lines, for both rates and forms. If you take the time to review this material, you will find that you can avail yourself of a very streamlined system.

The Nebraska Property and Casualty Filings Manual should be supplied to all company personnel responsible for submitting filings to the Department.

Those responsible for insurer filings will also be interested in the newly revised Nebraska "Agents and Underwriters Manual". This "manual" provides greater detail with regard to a number of items that would be expected to be of greater interest to agents and underwriters. These explanations cover exemptions relating to multi-state commercial policyholders and exempt commercial policyholders in depth in addition to other miscellaneous topics. It contains copies of three relevant P&C rules and the rate & form law as appendices. Copies of this and other material may be obtained from <http://www.doi.ne.gov/pc/guidelin.htm>.

Any questions concerning this bulletin should be directed to the Property/Casualty Division.

L. TIM WAGNER
Director of Insurance

CB-50
Filings Manual for Nebraska
Property and Casualty Insurance Lines

for the

Nebraska Department of Insurance

Effective September 4, 2005

(relates to the passage of LB 119 during the 2005 legislative session)

TABLE OF CONTENTS

Section Number	Subject
1	Introduction
2	General Filing Submission Instructions
3	Filing Procedures for Company Groups
4	“Prior Approval” or “File and Use” – Which Applies?
5	When Policy Form Filings are (or are not) Required
6	When Rate Filings are not Required
7	Nebraska’s Version of “Prior Approval” for Rates & Forms
8	Nebraska’s Version of “File and Use” for Forms
9	Nebraska’s Version of “File and Use” for Rates
10	Filing Forms Required With Filings
11	Documentation Required With Rate Filings
12	Excess Rates, “Guide (a)” Rates, Etc.
13	Consent-to-Rate Procedures
14	Public Access to Rate and Form Filings
15	PP Auto Territorial Filing Requirements
16	Notifications to be Given PP Auto Policyholders
17	Common Problems on Filings
18	Don’t File Schedule Rating in Nebraska!
appendices	see below

The appendices contain –

NEBRASKA FILING FORM R1 – This is applicable for all non-SERFF rate filings except for rule or manual changes that lack appreciable rating impact.

NEBRASKA FILING FORM R2 – This form must also be completed whenever a non-SERFF filing contains rate or rule changes.

NEBRASKA FILING FORM F1 – This form must be completed whenever a non-SERFF filing contains new or revised policies or forms.

NEBRASKA CONSENT-TO-RATE FORM – This is a sample or “advisory” form that insurers can use for consent-to-rate submissions. While consent-to-rate submissions are mandatory, the usage of this specific form is optional. Other forms could be used.

1. Introduction

This manual has been prepared to identify P&C forms and rates that must be filed, and to eliminate uncertainties regarding the information that must be filed in support of these filings. Utilization of this manual should reduce the time needed to review most filings by eliminating the need to request amendments or additional information from the filer and/or do other research.

Please see that all persons responsible for filings in Nebraska are familiar with and have access to a copy of this manual.

2. General Filing Submission Instructions

For paper filings, the following materials are required:

- (a) Filing transmittal forms.
- (b) The name of the company for which the filing is made, and the name and e-mail address of the person to which questions should be sent. If available, a toll free telephone number and a fax number can also be helpful, but we prefer to use e-mail for most inquiries.
- (c) Nebraska's statutes do not contain filing fees for forms or rates. However, our laws require retaliation. **If your state of domicile requires filing fees, the comparable filing fee must accompany your submission.**
- (d) Background information (i.e., loss development, trend, market analyses, etc.) necessary to explain and justify the data contained in the filing transmittal forms.
- (e) When revising currently approved forms, a comparison of the existing form or rule to the proposed form or rule with all changes clearly marked must be provided. **A revised listing of the approved forms and manual pages for a program must be included so the Department can verify that its files are updated.** Form listings should include form number, title, and edition date. Manual page listings should include page numbers and edition date.
- (f) When filing loss cost multipliers, a separate manual page must be included with the filing since cover letters, filing forms, and other documentation are filed in different places. **Rates or factors contained solely in cover letters or in accompanying documentation are not acceptable.** If loss cost pages are provided, then final rate pages (developed using the loss cost multipliers) are not required; however, companies must submit a manual page showing loss cost multipliers, minimum premiums, waiver of premiums, and any manual exceptions. If manual rate pages are filed, they must also show the loss cost multiplier used to develop the rates.

(g) Copies and return envelopes:

- For retention by the Department – one complete copy of all material.
- For routine notification to the filer of filing or approval – a copy of the filing cover letter and a list of forms and/or rate pages. We will cooperate with insurers that want a complete set of everything returned, but we do not want to make a practice of stamping large volumes of paper. A self-addressed envelope with sufficient postage and large enough to contain copies of all material to be returned to the filer should also be included with this.
- Optional – for notification of receipt – an insurer wishing acknowledgment from the Department of the receipt of a filing should enclose an extra cover letter, with a self-addressed postpaid envelope, on top of the filing package, with a notation / request that the cover letter is to be stamped “received” and returned to the filer. (If this extra copy is not on top, the clerical staff will not look through filings to see if it is contained elsewhere.)

The notification of receipt, when requested, will be completed by clerical staff that will not distinguish between those filings that are prior approval and those that are file and use. The routine notification returned to all filers after our filing and/or review will indicate “approved” for acceptable prior approval filings, while other filings will indicate that they have been filed with the Department.

With new programs and extensive revisions of existing programs, it is preferred that filings of rates and forms be made at the same time whenever possible.

3. Filing Procedures for Company Groups

Property and casualty groups utilizing common underwriting facilities are encouraged to use a group filing procedure. Under this procedure, a group names a lead company and the Department will keep physical copies of forms and rates in the lead company only. The Nebraska Affiliation and Filings Summary for each company will show which member companies utilize each program. Minor rate or form differences between companies will be noted in the individual program files. This procedure applies even when a particular program is not applicable to the lead company.

It is helpful for companies to utilize this procedure when possible, because it substantially reduces the volume of paper that we must keep. You are urged to contact this Department’s Property/Casualty Division should you have any questions in this regard.

4. “Prior Approval” or “File and Use” – Which Applies?

“File and use” applies to rates and forms for both personal and commercial lines, with certain exceptions:

- (a) Workers’ compensation forms (but not loss cost multipliers and related values) are handled on a prior approval basis. This includes large deductible forms and excess workers’ compensation forms, even though excess workers’ compensation insurance (written for approved self-insured employers) is technically considered liability insurance.
- (b) Medical professional liability rates and forms are subject to prior approval.
- (c) All rate and form filings made by advisory organizations are subject to prior approval. For instance, the filing of loss costs by ISO and NCCI are subject to prior approval. But this only applies to the filing of these materials by advisory organizations. An insurer filing the same material (which should rarely be necessary) would not be made subject to prior approval.
- (d) Rates and forms for liability and physical damage insurance covering rental of private passenger automobiles on a nonfleet basis is subject to prior approval.
- (e) Rates and forms for insurance written by joint underwriting pools or joint reinsurance pools are subject to prior approval.
- (f) 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, but this does not include those situations where coverage is provided without a separate charge by the business entity for its customers.

Certain lines of insurance are not subject to the Act. Most of these are discussed in more detail in sections 5 and 6, which follow.

5. When Policy Form Filings are (or are not) Required

Subject to the exceptions itemized in section 4, Nebraska is a generally a “file and use” state for personal and commercial P&C policies, certificates, forms and endorsements. Subject to a number of exceptions, all P&C policies, certificates, forms and endorsements must be filed with the Department and must conform to the statutes, opinions, and guidelines applicable to Nebraska insurance policies. Exceptions to the requirement of policy form filing include:

- (a) Insurers do not need to submit additional copies of forms and endorsements that an advisory organization has filed on their 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. Instead, 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. **Please be sure that you understand the applicability of advisory organization filings to you.** The fact that you purchase manuals or forms from an advisory organization does not necessarily mean that these items have been filed on your behalf. If you have questions regarding your status, please check with the advisory organization.

- (b) Reinsurance contracts are exempt from filing, except as provided in 44-7525 for joint reinsurance pools.
- (c) Financial guaranty insurance as defined in subdivision (19) of section 44-201 is 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.
- (d) Surety contracts are exempt from filing, except that advisory organizations must file all surety forms that they develop on behalf of their members or subscribers.
- (e) Policy forms and endorsements manuscripted and used for only a single personal or commercial risk are generally exempt. Major exceptions to this statement include medical professional liability, workers' compensation insurance and excess workers' compensation insurance. Note that this exemption does not apply to any form or endorsement that the insurer has filed in Nebraska or elsewhere. Any such forms must be filed if they are offered or used for a second account in Nebraska.
- (f) Filing of warranties and service contracts is not required by the P&C rate and form law, but automobile warranty and service contracts must still be filed with the Department prior to their use in accordance with section 44-3522. Chapter 44, Article 35 provides that all such contracts must be "full reimbursement" contracts and that, "the issuer of the policy will pay on behalf of the motor vehicle service contract provider all sums which the provider is legally obligated to pay in the performance of its contractual obligations under the motor vehicle service contracts issued or sold by the provider." This section does not, however, provide for the Department to review such filings for approval. As such, while such filings should be made much like any other filing of policy forms (explanation, two copies and a return envelope), the filing will merely be acknowledged.
- (g) Applications for insurance do not need to be filed unless the applications also serve as a binder or they become a warranty to or otherwise become a part of the policy.
- (h) Chapter 75 provides certain exemptions for policy forms that are not offered or sold to Nebraska-based commercial policyholders, but that may apply to Nebraska locations owned by a risk that is headquartered in a state other than Nebraska.

Certificates of Insurance –

"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 (e.g., as are commonly used in conjunction with construction projects), do not need to be filed.

“Renewal certificates” that renew a policy need to be filed. A bit of advice – be sure that “renewal certificates” provide all the information that is found on the policy declaration.

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. (As an aside, it is the Department’s general view that such a person or entity paying a premium for coverage is – or should be viewed as – purchasing a contract or policy of insurance, and that the person should have the benefit of a full copy of the entire contract, complete with an itemization of all rights which the person or entity has under the contract. As such, it is quite likely that an insurer attempting to file only a “certificate of insurance” in a situation like this will have the certificate disapproved.)

6. When Rate Filings are not Required

Rate filings are not required for the following:

- (a) 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, since it is not uncommon for filers to attempt to include some classifications that are generally class rated.
- (b) Exemption applies to rates for 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. Please check the Department’s website at <http://www.doi.ne.gov/pc/guidelin.htm> for a current listing of filed and non-filed inland marine classes.
- (c) 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. This does not mean that an advisory organization cannot provide copies of surety loss costs to insurers prior to their approval by the Department of Insurance, but the loss cost filing by the advisory organization must be made in a timely fashion and insurers must be informed of those loss costs that have been approved and those for which approval is pending.
- (d) Rates for reinsurance contracts are exempt from filing, except as provided in 44-7525 for joint reinsurance pools.

- (e) Rates for financial guaranty insurance as defined in subdivision (19) of section 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.
 - (f) Rates for warranties and service contracts do not need to be filed.
 - (g) 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) need not be filed. As an aside on this subject, be advised that workers' compensation law places limitations upon the writing of so-called large deductible insurance. The deductible amount cannot be less than 40% of the policyholder's non-deductible premium, and it also cannot be less than \$50,000. Thus, so-called large deductible insurance cannot be written for any policyholder with a non-deductible premium of less than \$125,000. Detailed approval requirements relating to large deductible workers' compensation insurance may be found on the Department's website at <http://www.doi.ne.gov/pc/largeded.pdf>.
-

7. Nebraska's Version of "Prior Approval" for Rates and Forms

For those limited situations when it is applicable, Nebraska's version of prior approval is very "standard." Forms and rates to which prior approval applies cannot be used before they have been filed with and approved by the Department of Insurance. Rates may not be excessive, 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.

8. Nebraska's Version of "File and Use" for Forms

Nebraska's version of "file and use" for forms is relatively standard, but with a few "insurer friendly" tweaks. There is no required waiting period, so that an insurer can make forms effective upon our receipt or shortly thereafter, without needing to wait for our approval. In fact, an insurer waiting for our approval will wait a very long time, because we don't "approve" filings made on a "file and use" basis. The Department will review most forms within a reasonable time following their receipt using review standards that are not dissimilar in practice to those found in most states and, if problems are found, will notify insurers that have made defective or objectionable filings.

As with prior approval, "file and use" filings must contain an effective date. The difference is that this effective date can be the same as the day that the Department receives the filing (but not sooner).

If the Department finds that a form that has been filed does not meet statutory standards, then the Department will notify the insurer. The notice will specify in what respects the filing fails to meet requirements. Upon receipt of a formal notice of disapproval, the insurer will cease use of a 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. For this disapproval to be made past the first 30 days (unless correspondence was ongoing), a prior hearing is required.

These “insurer-friendly” provisions are designed to soften the impact of any disapproval so that insurers will not need to treat Nebraska’s “file and use” law as a de facto prior approval law.

9. Nebraska’s Version of “File and Use” for Rates

Nebraska’s version of “file and use” for rates is not standard. Many insurers treat the “file and use” rating laws of some states on a de facto prior approval basis. Nebraska’s law contains relatively unique provisions designed to make it very reasonable for insurers to file their rates, start using them, and not need to worry about adverse repercussions.

As with prior approval, “file and use” filings must contain an effective date. The difference is that this effective date can be the same as the day that the Department receives the filing (but not sooner). Once received, the Department will usually review the filing within 30 days for completeness and compliance with law. As with prior approval, the Department can extend this 30-day period another 30 days upon notification.

If the Department finds that the rates that have been filed do not meet statutory standards, then the Department will disapprove. This disapproval will only apply after another 30 days, however. This provision is designed to soften the impact of any subsequent disapproval so that insurers will not need to treat Nebraska’s “file and use” law as a de facto prior approval law.

In addition, insurers should want to use Nebraska’s law on a true “file and use” basis because there are very few reasons for a well-formed rate filing to be disapproved. It is important that insurers that are reluctant to make rate filings on a “file and use” basis understand these differences and the few things that might cause problems. The standards for “file and use” are much less likely to cause questions by the Department than with prior approval:

- Excessive rates – The Department cannot disapprove “file and use” rate filings for excessive rates, either at the time of filing or later – unless. The “unless” is pretty remote. If the Department has a hearing and finds that competition is not an adequate regulator of rates for a market, then the Department can hold hearings on rates on file for individual insurers and subsequently disapprove them. The philosophy underlying “file and use” is that competition will effectively prevent all but isolated instances of rates that are higher than indicated, and that insurers that attempt to charge too-high rates will be unsuccessful at writing significant amounts of business.
- Unfairly discriminatory rates – A very limited standard for unfair discrimination applies for “file and use” lines of insurance. The only way to run afoul of the standard is to attempt to discriminate based on race, ethnic background, religion or against victims of domestic abuse. In the course of over 20 years, we have only seen a couple of filings that ran afoul of any of

those objectionable characteristics. At a more practical level, we can't disapprove simply because an insurer files to discriminate based on something that we don't think makes a difference. We also can't disapprove if an insurer files for a 25% differential based on a factor that we think is only worth 10%. (The "unless" for the standard of unfair discrimination and its underlying philosophy are the same as for the standard of excessiveness. We have the ability to revert to prior approval if we find competition to be lacking in an entire market.)

- 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 that we would 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.
-

10. Filing Forms Required With Filings

As is outlined in the appendix, there are mandatory filing forms applicable to all classes of rate filings. (Companies are still encouraged to submit their normal rate filing format in addition to the mandatory Nebraska rate filing forms.)

11. Documentation Required With Rate Filings

Companies are encouraged, and are often required, to submit documentation in addition to the mandatory Nebraska rate filing form. While the Department is generally willing to examine such documentation in almost any format, there are certain general principles applicable to such documentation. These are as follows:

- (a) Indicate whether data is in a policy year, calendar year or calendar-accident year form.
- (b) Indicate if premiums shown in premium/loss exhibits have been adjusted to current rate levels.
- (c) Indicate if losses have been trended and the amount of trend.
- (d) Indicate whether losses shown include allocated and/or unallocated loss adjustment expense.
- (e) Show development of incurred losses (for policy year and calendar-accident year losses) and show development of earned premiums (for policy year premiums).
- (f) Clearly show the requested change versus the indicated change. Provide an adequate explanation when the request differs significantly from the indication; and

- (g) 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 to theirs. If a company chooses to make a “me too” filing, compare the company’s experience, operations, and expenses with its competitor’s.
-

12. Excess Rates, “Guide (a)” Rates, Etc.

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, if not clearly indicated elsewhere within CB-50, must be approved by the Department. That is, the designation of a class of insurance as “Guide (a)” is not a decision that is allowed on a “file and use” basis. We have had experiences where insurers will attempt to self-deem classes of insurance as eligible for “Guide (a)” treatment.

13. Consent-to-Rate Procedures

The Department recognizes that some risks, although deserving of insurance, represent greater exposures to loss than are contemplated by the company’s manual rates. We believe the availability of insurance for these risks with licensed companies to be in the public interest. It is therefore the purpose of these guidelines to outline procedures that will not discourage the use of this rating mechanism, while still allowing us to monitor consent-to-rate activities and initiate inquiries where necessary.

Note that 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, then 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. A sample consent-to-rate form is contained in the appendix. Please note that for most “ordinary” consent-to-rate situations, all we want is a brief explanation on the application that states the nature of the risk’s deficiencies or unusual exposure(s). Most of the time, only a sentence or two is necessary – we’re not interested in the submission of detailed underwriting reports.

The consent-to-rate form shall be completed prior to signature by the insured, and no alterations, additions, or deletions shall be made after the form has been signed by the insured.

Provide the Department with two copies of the consent-to-rate form and a return envelope to which adequate postage has been affixed. One copy will be stamped “acknowledged” and returned to the insurer for its records. The Department’s copy will be kept confidential.

The Department has no authority to disapprove a consent-to-rate application based upon a perception that the risk characteristics cited do not warrant the surcharge that has been applied. Rather, an insurer that is found to regularly submit defective consent-to-rate applications may (after a hearing) be placed on a prior approval basis for future consent-to-rate applications. Past experience has shown that, while consent-to-rate problems are not uncommon, that they are also reasonably amenable to correction.

The important thing for an insurer to note, however, is that it does not need to be reluctant to write consent-to-rate policies owing to a fear that it may end up being stuck with the account using uncharged rates. While the Department may take action to change the basis for future consent-to-rate filings to prior approval if defective applications are repeatedly submitted, this action will not apply to filings that have already been made.

14. Public Access to Rate and Form Filings

Rate and form filings and their supporting documentation are available for public inspection, subject to the provisions of sections 84-712 to 84-712.09 (the public records law), except:

1. Consent-to-rate filings for individual policyholders are protected from disclosure;
2. Credit scoring plans are protected from disclosure;
3. Those few rate and form filings subject to prior approval, except those made by advisory organizations, are protected from disclosure until after the Department has approved or disapproved them, and
4. Rate filings made subject to “file and use” provisions are protected from disclosure until after the Department has completed its review of them.

Policy form filings made subject to “file and use” provisions are available for public inspection upon receipt.

15. Private Passenger Auto Territorial Filing Requirements

Section 44-7516.01(2) required the ten largest private passenger automobile insurers to make a “qualifying rate filing” with us with an effective date between 1/1/2002 and 7/1/2003. (The determination of the “ten largest” is based on private passenger automobile liability written premiums in Nebraska.) For a rate filing to “qualify,” it had to contain actuarial indications for the bodily injury and property damage liability rate relativities used for rating territories that

include any part of the city of Omaha. (The requirements did not apply to coverages other than liability.)

That period of time and requirement has since passed, but the ten largest private passenger automobile insurers are still required to make a “qualifying rate filing” at least once every three years. If an insurer subject to these requirements (i.e., one of the ten largest) goes more than three years between subsequent “qualifying rate filings,” then its rates for the city of Omaha will expire and it will be unable to write or renew business there until another “qualifying rate filing” has been approved.

Typical actuarial procedures for the determination of territorial rating relativities will qualify as fulfilling this requirement. Such procedures involve the display of suitably adjusted premiums and losses, the application of credibility, and a display showing current, indicated and selected relativities. Explanations should be provided if the selected relativities involve a greater change than indicated or go in the opposite direction from the indicated change. Customarily, additional explanation will not be required for movements in territorial relativities that are less than indicated (so-called “tempering”).

While the Nebraska Department remains interested in differences between adjacent territories, it must be stressed this statute does not require the more complex type of analysis that would be necessary to evaluate whether territorial boundaries are rational in the first place. All that a rate filing must contain to be a “qualifying rate filing” is quantification of the indicated rating relativities for the territories proposed by the insurer (which will often be the same territories as those already in effect).

16. Notifications to be Given Private Passenger Auto Policyholders

The Rate & Form Act, specifically §44-7516.01(1), contains two disclosure requirements that apply to private passenger auto insurance. This subsection states:

“On and after July 1, 2002, no private passenger automobile liability policy shall be delivered, issued for delivery, or renewed with respect to any motor vehicle licensed in this state unless accompanied by a disclosure showing (1) the location used to determine the rate charged to the named insured and (2) if any credit-based rating was used to determine the rate charged.”

The numbering shown in the quotation above is not in the law. We added it to refer to the explanations that follow:

- (1) For many insurers, the first of these two requirements will not require any work at all, because their policy forms and renewal certificates unambiguously show the garaging location(s) used to rate the vehicle(s) covered by the policy. For the law’s requirement to be fulfilled in this fashion, please note that the policy must be clear on this point. The fact that the policyholder’s address is shown on the declarations page will not suffice unless the policy makes it clear that this is the address that is used for rating purposes and

the insurer makes reasonable provisions to disclose the address used for rating purposes when it is different than the address shown on the declarations page.

An insurer may also choose to comply with this law by using a separate enclosure that accompanies the policy or billing, or by changing the format of its billing statement. Note that there will be no need to file billing statements or other enclosures with the Department of Insurance. While changes to policies or endorsements that are made to comply with this law must be filed, we must stress that these are the only filings that should be made to comply with this law. If an insurer is not changing a policy form or endorsement, then there will be no need for us to give any kind of approval.

- (2) The applicability of this law's credit-based rating disclosure is limited. It does not cover:
 - (a) When an insurer uses credit history or credit scoring to determine whether it will provide coverage for a potential policyholder, or
 - (b) When a group of insurers uses credit history or credit scoring to determine which of its member insurers will provide coverage, even though the member insurers may have different rate levels.

The disclosure requirement covers only those situations where an individual insurer has two or more rate levels potentially available to a policyholder and credit scoring or some other use of credit history is a factor used in determining which rate applies. In these situations, the insurer must make a clear affirmative statement to the policyholder that it has used credit history or credit scoring as a factor in determining the rate being charged. It will not suffice to merely include a blanket statement that credit scoring might have affected the rate – the disclosure must be an affirmative statement made only when credit scoring or credit history is used by the individual insurer in its pricing calculations.

While the law does not require the disclosure to indicate the effect that credit scoring had upon the individual policyholder, we expect that insurers that do not explain this will receive additional questions from their policyholders. Some may call the Department of Insurance instead. As such, we suggest that insurers will find their interests (and ours) to be served by making broader disclosures than the minimal disclosure required by this law.

Please note that, if requested, insurers must provide this additional information to affected policyholders. Section 44-7517 requires that, “within a reasonable time after receiving a written request and after receiving payment of such reasonable charge as it may require, every insurer ... shall furnish all pertinent information to any insured affected by a rate, premium, or prospective loss cost made by the insurer...” Insurers should also note that the disclosure requirement contained in this law does not replace or supercede disclosure requirements that may exist elsewhere (e.g., in the Fair Credit Reporting Act).

17. Common Problems on Filings

For forms, Nebraska's filing laws do not involve many unusual requirements. There is only one requirement (which we will discuss) that commonly trips up insurers. For rates, Nebraska's laws seem almost too good to be true – like there is almost no reasonably imaginable way to get a filing disapproved. Unfortunately (if you're an insurer), that is not true. There are still a few ways to get a "file and use" rate filing disapproved in Nebraska.

In order, the following are probably the top five ways to have a filing delayed or disapproved.

- (1) File schedule rating (by any name) or any other subjective rating scheme. This is so common that we have provided a separate section of this bulletin (section 18, which follows) dealing with it. In a nutshell, Nebraska law provides $\pm 40\%$ flexibility in lieu of various schedule rating plans. An insurer does not need to include anything in its rate filings to avail itself of this flexibility, and attempts to file so-called schedule rating plans will only force us to correspond with the filer.
- (2) 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 without proper filing fees usually won't make it as far as the analyst.
- (3) Include too-strong conditions relating to fraud or misrepresentation that violate section 44-358. Section 44-358 provides:

"No oral or written misrepresentation or warranty made in the negotiation for a contract or policy of insurance by the insured, or in his behalf, shall be deemed material or defeat or avoid the policy, or prevent its attaching, unless such misrepresentation or warranty deceived the company to its injury. The breach of a warranty or condition in any contract or policy of insurance shall not avoid the policy nor avail the insurer to avoid liability, unless such breach shall exist at the time of the loss and contribute to the loss, anything in the policy or contract of insurance to the contrary notwithstanding."

This law has been around since at least 1913. The case law surrounding it is extensive and much too complex to discuss in this bulletin. As a generalization, insurers should determine the extent to which specific policy provisions relating to fraud and misrepresentation are necessary. Keep in mind that the complete absence of policy provisions dealing with fraud and misrepresentation does not mean that the insurer has no legal defenses against it.

- (4) File cancellation provisions that fail to comply with Nebraska cancellation and nonrenewal laws. These transgressions can occur in several different forms depending on the line of insurance, but the most common error is to provide 30 days notice of cancellation or nonrenewal 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.)

The other common transgression is for a cancellation provision to allow cancellation by “delivery” of the cancellation notice to the policyholder. Nebraska cancellation law does not provide for the “delivery” of cancellation notices. Cancellation notices must be mailed.

- (5) File rates and don't file data and justification for them. This may seem odd, as the Department will not disapprove a rate for being excessive and will very rarely disapprove a rate for being inadequate or unfairly discriminatory. The simple explanation is that the law requires that justification be filed. A more thorough explanation is that there are two reasons why this requirement is in the law. First, it 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, then the Department can be reasonably confident that competition is working. The second reason is that, in the absence of any requirement for the filing of justification, the ability of people to use the Department as a source of useful competitive information is substantially reduced.

The nature of the justification required will vary by line and by the market penetration of the insurer. A small or new insurer is primarily motivated by the rates of its competitors and its sense of the results being produced by that line of insurance in the marketplace. Slicing and dicing the data of an insurer with \$3,289 of Nebraska experience won't tell much. But an insurer with significant market penetration will be motivated in large part by its experience, and we want to see to a professional quality rate filing developed from that experience, even if the insurer ultimately selects higher or lower rates than are indicated by its analysis.

18. Don't File Schedule Rating in Nebraska!

Many state rating laws have their own unique provisions; Nebraska's law has several that are largely designed to be insurer-friendly. One of these insurer-friendly provisions, however, trips up more insurers than anything else. This provision bans so-called “schedule rating plans.” The typical “schedule rating plan” provides an underwriter with the ability to give credits or debits of up to 5%, 8%, or 10% ostensibly based on an evaluation of such subjective individual characteristics like management, location, housekeeping, etc. Many states have desk drawer rules that cap the aggregate impact of such plans at $\pm 25\%$, although this varies from state to state. Some states have higher caps.

Contempt for the integrity of so-called “schedule rating plans” is common among those that are familiar with them. It is understood generally, but rarely admitted publicly, that such plans are really not used as “rating plans,” in spite of efforts by some insurers (in some states more than others) to include documentation in their files to make it appear otherwise. Rather, the reality is that underwriters routinely consider the entire gamut of relevant characteristics of each individual risk, including competitive factors, and will adjust rates upward or downward (usually downward) to develop a price that the underwriter feels is appropriate and competitive. These adjustments are then labeled as being the result of “schedule rating plans.”

The intent underlying Nebraska's rating law does not dispute the need for underwriters to examine the subjective characteristics of individual risks that are not otherwise recognized to adjust rates upward or downward to be competitive and appropriate for the exposure. However, rather than going through the exercise of "schedule rating," Nebraska's law simply says that the underwriter can adjust premiums for commercial accounts¹ anywhere from 40% downward to 40% upward. The major difference between this and so-called "schedule rating" is that we have no requirement that underwriting files include documentation to "justify" such adjustments. Thus, while Nebraska's unique requirement may cause a bit of extra work for state filing personnel, it can have the effect of saving the insurer's underwriters many times that amount of extra work when compared to states that require individualized documentation in every underwriting file to "justify" the schedule credits and debits that are used.

At the philosophical level (although not at the practical level), another difference with Nebraska's $\pm 40\%$ pricing flexibility versus "schedule rating plans" is that Nebraska's pricing flexibility can openly be applied for purely competitive reasons, whereas "schedule rating plans" are not intended to include competitive considerations. Another minor technical difference between Nebraska's $\pm 40\%$ pricing flexibility and "schedule rating plans" is that the recognition of commission contribution or other expense differences is included within Nebraska's $\pm 40\%$ pricing flexibility, whereas such adjustments are typically in addition to the $\pm 25\%$ pricing flexibility offered by "schedule rating plans."

From the point of view of statistical collection, insurers should code the total credits and debits in the same fashion as they code "schedule rating plans." (Besides – if "schedule rating plans" were viewed by insurers as truly being rigorous rating plans – one might expect separate coding for management, location, etc., so that insurers could discern whether the rating plans were giving appropriate amounts of credit and debit. But that is not seen.)

For those interested in the specific sections of Nebraska law that result in these requirements, section 44-7508(9) provides in part:

"The director shall disapprove a filing if ... the filing discriminates between risks based on subjective factors, except that an experience rating plan may use loss reserves without being considered as subjective."

Section 44-7512, provides in part:

"No later than January 1, 2001, the director shall adopt and promulgate rules and regulations to disapprove subjective rating criteria effective January 1, 2001, in order to bring rating systems in compliance with the Property and Casualty Insurance Rate and Form Act."

¹ This includes general property and liability coverages written on commercial forms, and also includes medical professional liability insurance and workers' compensation insurance. The only commercial insurance that is not subject to the $\pm 40\%$ rating flexibility are farm and ranch insurance, whether written on commercial forms or farmowners / ranchowners forms. Note, however, that workers' compensation insurance written for farm or ranch accounts is subject to the same $\pm 40\%$ rating flexibility that all other workers' compensation insurance has.

This section was fulfilled through the adoption of Chapter (rule) 74 and resulted in the disapproval of all subjective rating devices in effect prior to January 1, 2001. Section 5 of that rule provides in part:

“For application to policies that are written or renewed with effective dates of January 1, 2001 or later, insurers’ subjective rating plans, subjective rating criteria and subjective intra-insurer eligibility rules are hereby disapproved.”

As schedule rating plans are subjective, these provisions disapprove those that were in effect on or prior to January 1, 2001, and call for the disapproval of such plans filed after that date. As was referenced earlier, however, the consideration of subjective factors is contemplated elsewhere through the grant of $\pm 40\%$ rating flexibility. Specifically, section 44-7509(1) provides:

For medical professional liability insurance and for insurance subject to section 44-7508, insurers may increase or decrease premiums on an individual risk basis up to forty percent based on any factor except:

- (a) The rate adjustment cannot be based upon the race, creed, national origin, or religion of the insured;
- (b) The rate adjustment cannot violate the Unfair Discrimination Against Subjects of Abuse in Insurance Act; and
- (c) The rate adjustment cannot apply to (i) insurance covering risks of a personal nature, including insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs or (ii) insurance covering farms and ranches², including crop insurance.

The bottom line is – don’t file schedule rating. It will provoke needless and time-consuming correspondence. Underwriters already have $\pm 40\%$ pricing flexibility without anything mentioned in a rate filing, so they don’t need it. Rather, the filing of a schedule rating plan gives the appearance that an insurer is trying to get flexibility not allowed by the law *in addition to* the flexibility already allowed by it.

² Note – section 7508 covers all commercial lines of insurance except for medical professional liability. Thus the action of this section extends $\pm 40\%$ rating flexibility to all commercial lines, including both workers’ compensation and medical professional liability. Personal lines are excluded, as is insurance covering farms and ranches. The exclusion of insurance covering farms and ranches does *not*, however, extend to workers’ compensation insurance covering employees of farms and ranches. All workers’ compensation insurance, *even that covering employees of farms and ranches*, is subject to the $\pm 40\%$ rating flexibility provided by the rating law.

APPENDIX

NEBRASKA FILING TRANSMITTAL FORMS

These requirements apply to hardcopy filings, not SERFF filings. Insurers using SERFF should use standard SERFF filing procedures and forms.

For hardcopy filings, there are three mandatory filing forms, two applying to rate filings and one applying to form filings:

- **NEBRASKA FILING FORM R1** – This is applicable for all rate filings except for rule or manual changes that lack appreciable rating impact. Documentation relating to the completion of this form is shown below.
- **NEBRASKA FILING FORM R2** – This form must be completed whenever a filing contains rate or rule changes.
- **NEBRASKA FILING FORM F1** – This form must be completed whenever a filing contains new or revised policies or forms.

Please reproduce adequate copies of these filing forms for your use. It is permissible and often advisable to reformat these forms if enough space is not provided, if more columns are needed, or if you would like to insert explanatory text. Please keep the information in the same order as we have it on these forms.

Long-time Nebraska filers will notice that this set of filing forms is a reduction from those that were previously required. If, for some reason – like you’ve got the old forms hardwired into your computer – you find it easier to use the old forms, we will have no problem with that. The new forms simply contain a little less information and they don’t require that the same information be repeated quite as much. As such, we will have no problem accepting the old forms, but we expect that most users will want to switch to the new forms.

In addition, the **NEBRASKA CONSENT-TO-RATE FORM** is offered for illustrative purposes. The nature of the information contained on the form is mandatory for consent-to-rate submissions, but the form and its format is optional.

EXPLANATION OF NEBRASKA FILING FORM R1

Applicability:

This explanation applies to the Nebraska Filing Form R1. This is a three-page form with the form designation, “NEBRASKA FILING FORM R1.” File this when you use an advisory organization’s loss costs, or when you make an independent filing.

General:

As a practical matter, we are much more likely to need additional documentation when filings affect substantial premium volumes or when the filing or the factors submitted to support the filing are out of the ordinary. Filers should make an effort to supply documentation in addition to the minimal amount contained on these filing forms when the filing is unusual in some respect or when significant premium volumes are involved. Please note that it is not acceptable to omit filing forms from your submission simply because much or all of the information in the filing forms is already contained in the rest of your filing.

When a company group that has designated a lead company makes a filing that is applicable to more than one of its member companies, the Department saves only one copy of the filing for all members of the group to which the filing applies. Therefore, fill out only ONE form for each filing, regardless of how many companies are involved. Do NOT fill out one form for each company involved, unless you are filing different loss cost multipliers for different companies.

COMMENTS ON PAGE 1 OF NEBRASKA FILING FORM R1

Line #'s

- 2 This is the code number that the Department has assigned to your company. It is different from your NAIC code. Please contact us if you don't know what your number is; then save the number with your copies of these forms.
- 5A Provide a generic reference that allows us to quickly identify the type of insurance that is involved. This may or may not directly correlate to an Annual Statement line of insurance. Examples include "homeowners" (which is an Annual Statement line) and "D&O" or "Excess / Umbrella Liability" (which are not Annual Statement lines).
- 6 This number does not require actuarial precision. Rather, we want a ballpark estimate of the premium volume that you expect to write for this program next year, presuming that the proposed filing is approved.
- 7 This entry is for the convenience of those companies that use an internal filing reference number. We encourage this practice, but we do not require it. If you don't use an internal filing reference number, then just leave this blank.
- 9 This line exists to aid us in the enforcement of our laws that require insurers to report their experience to a statistical agent.
- 13 Loss cost multiplier filings made by insurers that have loss costs filed on their behalf by an advisory organization will be automatically applied to new loss cost filings by the advisory organization cited. This option allows you to adopt advisory organization loss costs as of the effective date cited by the advisory organization, or you can specify a lag period such as 30 or 60 days. You can choose different dates for new and renewal business.

COMMENTS ON PAGE 2 & 3 OF NEBRASKA FILING FORM R1

Line #'s

- 5, 6(c) & 7(c) These entries request that an insurer provide its “target combined ratio.” This is a common trade ratio. The numerator is the sum of all expenses (other than income taxes) and losses and loss-related expenses. The denominator is the earned premium for the period of time during which the expenses and losses were incurred. Clearly, the determination of such targets must contemplate investment income and income taxes, as well as the relative risk or hazard presented by the line of insurance. Even a superficial treatment of these topics is beyond the scope of this bulletin; competitive rating laws (like Nebraska’s) presume that insurers have spent a considerable amount of time studying their target loss and expense ratios.
- 7(a) Loss costs are an estimation of the average loss and LAE that will be incurred on a prospective basis per unit of exposure for all companies reporting data to the advisory organization. Actual incurred losses for individual companies may be different than those projected for the advisory organization’s “average” book of business for a number of reasons. Trend or development factors might be wide of the mark and year-to-year results will vary randomly from company to company. In addition to variation from these causes, there are differences from company to company that are expected because of different marketing and underwriting practices. If a company is expected to write an “average” mix of business and experience and judgment rating (Nebraska’s $\pm 40\%$) is not involved, then this factor should be 1.0. This would mean that the company expects its incurred losses to match those of the market in general. A “preferred” writer may need a lower factor, such as .85, and a substandard writer may need a higher factor, such as 1.15.

NEBRASKA FILING FORM R1

1. Company name(s). For groups, show the lead company's name first.	2. NE ID#	3. State of Domicile

4. Name & title of contact person: _____
 Phone number: _____ Fax number: _____
 E-mail address: _____

5. A. Generic line or type of insurance: _____
 B. Your trade name, if any (e.g., Protection-Pak): _____

6. Give company's estimated premium volume for this line or type of insurance next year. (If under \$50,000, simply indicate, "under \$50,000") _____

7. Company filing number: _____

8. Advisory organization name and filing reference number (if applicable): _____

9. To what statistical agent does the company submit premium and loss experience for this line of insurance? _____

10. Is this a revision or a new program? _____

11. Effective date of this filing: _____

12. Are there new or revised forms that apply to this rate filing? If so, are they part of this filing?
 _____ If not, when will they be filed? _____

ITEM 13 IS APPLICABLE TO LOSS COST MULTIPLIER FILINGS ONLY

13. Show the delay, if any, that shall automatically apply to your implementation of future loss cost filings by the advisory organization: _____

COMPLETE THIS SECTION IF A LOSS COST FILING

6. Factors relevant to the determination of an indicated loss cost multiplier (LCM):

- a) Loss Cost Modification* _____
- b) Projected Total Expenses (e.g., 0.30 for 30%) _____
- c) Target Combined Ratio** _____
- d) LCM Filed (or Average LCM Filed) _____

COMPLETE THIS SECTION IF AN INDEPENDENT RATE FILING

7. Determination of indicated rate level change:

- a) Projected Loss Ratio at Current Rate Level _____
- b) Projected Total Expenses (e.g., 0.30 for 30%) _____
- c) Target Combined Ratio** _____
- d) Indicated Average Rate Level Change $\frac{a}{c - b}$ _____
- e) Average Filed Rate Level Change*** _____

* **Show expected relation of your loss costs to the loss costs filed by the advisory organization. If the same, then 1.0; if 15% less, then .85, etc.**

** **The target combined ratio must reflect a consideration of investment income.**

*** **If the average filed is significantly different than indicated, please provide an explanation.**

NEBRASKA FILING FORM F1

PROPERTY – CASUALTY FORMS TRANSMITTAL SUPPLEMENT Sheet for Multiple Form Filing

Form Title	New Form #	Replaced Form #	Type of Form	Line(s) of Insurance	M - Mandatory O - Optional	Description of Form	R - Restricts B - Broadens C - Clarification

NEBRASKA FILING FORM R2
PROPERTY - CASUALTY FILING
RULE AND RATE PAGE TRANSMITTAL
Sheet for Listing and Replacing of Manual Pages

Manual Division: _____

New Page Number	Edition or Approval Date	Replaced or Withdrawn Page Number	Edition or Approval Date

FORM R2 (1/2001)

NEBRASKA CONSENT-TO-RATE FORM³

Name & Mailing Address of the Policyholder:

Insurance Company: _____

Description of the substandard, unusual or hazardous condition that necessitates the use of a rate or premium higher than that on file for the insurer⁴:

The rate or premium increase⁵: _____

Policyholder signature⁶: _____

³ Consent-to-rate filings must be made (two copies, please) for every usage of consent-to-rate, but this is only a sample consent-to-rate form. As long as the information contained on this form is contained on a consent-to-rate submission, it can pass muster. The usage of this specific form is not required.

⁴ An exhaustive explanation is not necessary. We simply need a clear indication of the reason for the increased rate or premium, which also gives us an assurance that the policyholder has a clear understanding of the situation. A quick warning – reasons that merely refer to a policyholder’s inability to obtain coverage at standard rates, or comments that essentially equate to “class of risk” are not acceptable.

⁵ Express the surcharge in the manner in which it has been calculated and is most easily expressed. For instance, if the premium involves a flat \$500 surcharge, then state that the premium has been surcharged \$500. If it has been increased 50%, then state that. Don’t bother with trying to convert a flat amount into a percentage or a percentage into a dollar amount – it isn’t necessary.

⁶ The signature by the policyholder or an authorized representative of the policyholder (NOT the insurance agent) must be made after the rest of the information has been completed.