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## **Technical Advisory**

**TA 241**

**August 30, 2004**

**SUBJECT: LDI Regulation 80 -- Commercial Lines Insurance Rate Deregulation**

**BACKGROUND:** LDI Regulation 80 implements the provisions of Act No. 878 of the 2004 Regular Session of the Louisiana Legislature which exempts commercial property and casualty insurers from the rate approval process unless the Commissioner determines that the market for a line of insurance is noncompetitive.

**MAIN POINTS:** LDI Regulation 80 is attached for your review. The regulation applies to all authorized insurers engaged in the business of writing commercial property and casualty insurance. Reg 80 provides that commercial property and casualty insurance rates shall be exempt from approval of the Louisiana Insurance Rating Commission, and that the Property & Casualty Division of the Louisiana Department of Insurance shall have exclusive authority over commercial rates.

Commercial policies less than \$10,000 in premium shall be subject to "file and use" rate approval by LDI. "Exempt Commercial Policyholders" with policy premiums in excess of \$10,000 shall be exempt from rate approval unless the Commissioner finds that the line of business is not competitive. The regulation specifies the criteria the Commissioner will use to determine if there exists a competitive or noncompetitive market. Workers Compensation and medical malpractice are exempt from the statute and Reg 80.

**NECESSARY ACTION:** Circulate this Technical Advisory to all Commercial Lines staff. Disseminate this Technical Advisory to appropriate insurance company personnel.

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Department of Insurance  
Office of the Commissioner

COMMERCIAL LINES INSURANCE RATE DEREGULATION  
(LAC 37: XIII. Chapter 93)

In accordance with the provisions of LRS 49:950 et seq. of the Administrative Procedures Act the Commissioner of Insurance hereby gives notice of his intent to adopt Regulation 80 implementing a regime of commercial policy rate deregulation. Adoption of the proposed regulation is authorized by Acts 2004, No. 878.

TITLE 37  
INSURANCE  
Part XIII.

Chapter 93: Regulation 80.  
Commercial Lines Insurance Rate Deregulation

**§ 9301. Authority**

This regulation is adopted pursuant to LRS 22:3 and LRS 22:1401.1D.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3 and LRS 22:1401.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:

**§ 9303. Purpose**

The purpose of this regulation is to implement the provision of Acts 2004, No. 878 of the Louisiana Legislature, Regular Session, which exempts commercial property and casualty insurers from the rate approval process unless the Commissioner determines that the market for a line of insurance is noncompetitive. The regulation specifies the criteria the Commissioner will use to determine if there exists a competitive or noncompetitive market.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3 and LRS 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:

**§ 9305. Scope and Applicability**

This regulation applies to all authorized insurers engaged in the business of writing commercial property and casualty insurance in this state.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3 and LRS 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 30:

**§ 9307. Severability**

If any section or provision of this regulation is held invalid, such invalidity shall not affect other sections of provisions which can be given effect without the invalid section or provision, and

for this purpose the sections and provisions of this regulation are severable.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3 and LRS 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:

### **§ 9309. Definitions**

A. For the purposes of this regulation the following terms shall have the meaning ascribed herein unless the context clearly indicates otherwise:

"Affiliated Group" means two or more persons who are owned or controlled directly or indirectly through one or more intermediaries by, or are under common control with, the person specified (i.e., the named insured) and includes a subsidiary.

"Anticompetitive behavior" means an insurer monopolizing or attempting to monopolize, or combine with or conspire with any person to monopolize, in any territory, the business of insurance of any kind, subdivision or class.

"Authorized Insurer" shall have the meaning found in LRS 22:5(3).

"COI" means the Commissioner of Insurance for the State of Louisiana.

"Commercial risk means any kind of risk that is not a personal risk.

"Exempt Commercial Policyholder" means a person who has and maintains an annual commercial insurance policy premium, excluding workers compensation and, if applicable, medical malpractice liability insurance premiums, of at least ten thousand (\$10,000) dollars in the preceding fiscal year.

"Noncompetitive market" means a market in which a reasonable degree of competition for a line of insurance does not exist as specified in § 9315; or a market which has been found to exhibit anticompetitive behavior or otherwise be in violation of LRS 22:1211 et seq.

"Insurer" shall have the meaning found in LRS 22:5(10).

"LDOI" means the Louisiana Department of Insurance.

"Line of insurance" means the lines of business included on the Exhibit of Premiums and Losses (Statutory Page 14) of the Annual Statement Blank.

"Office of Property and Casualty" means the Office created by LRS 36:688.

"Person" means an individual, a corporation, a partnership, an association, a trust, a joint stock company, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

"Personal risk" means homeowners, tenants, private passenger nonfleet automobile, mobile

home and other property and casualty insurance for personal, family or household needs.

"State" means the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3 and LRS 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:

### **§ 9311. Types of Insurance Exempt From Rate Filing and Approval Process**

A. All lines of commercial property and casualty insurance, including but not limited to Commercial Property, Boiler & Machinery, Fire and Allied Lines, Commercial Auto, General Liability, Non-Medical Professional Liability, Business Owners and Inland Marine insurance, written on commercial risks are exempt from the filing and approval provisions of LRS 22:1401 et seq. if the policy is issued to an exempt commercial policyholder as defined in §9309, except for the following kinds:

- (1) Workers compensation; and,
- (2) Medical malpractice liability insurance.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3 and LRS 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:

### **§9313. Exempt Rates**

A. If, after holding a public hearing, the Commissioner has declared the market for a line of insurance competitive, then the rates employed for that line are exempt from the filing and approval process. Any such public hearing shall comply with the Open Meetings law.

B. Exempt rates shall be used only when writing coverage on an exempt commercial policyholder. If exempt rates are used, an informational filing must be submitted to the Office of Property and Casualty.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3 and LRS 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:

### **§ 9315. Noncompetitive Market; Public Notice and Hearing**

A. If the Commissioner has reason to believe that a noncompetitive market for a line of insurance exists he shall give public notice in the manner specified in LRS 22:1354C and conduct a public hearing.

B. In determining whether a reasonable degree of competition does not exist within a line of insurance, the COI shall consider the following factors:

1. The number of insurers available to write the coverage;

2. Market shares of the leading writers and the changes in market shares over a reasonable period of time;
3. Existence of financial or economic barriers that could prevent new firms from entering the market;
4. Measures of market concentration and changes of market concentration over time;
5. Whether long-term profitability for insurers in the market is reasonable in relation to industries of comparable business risk;
6. The relationship of insurers' cost to revenue over a reasonable period of time.
7. The availability of insurance coverage to consumers in the markets by specific geographical area, by line of insurance and by class of risk;
8. The extent to which any insurer or group of affiliated insurers controls all or a portion of the market; and,
9. The opportunities available to consumers in the market to acquire pricing and other consumer information.

These factors must indicate that there is a competitive market in order for a determination to be made that the market is competitive for the line of business under review. If it is determined that a line of business is noncompetitive, the rates for that line of business shall be governed by the file and use provisions of LRS 1401.1B until such time as a finding is made that the market is no longer noncompetitive.

C. The Commissioner shall hold an investigatory hearing to determine if the market is noncompetitive if he receives a written request from an aggrieved policyholder or any other affected person or organization. The request must specify the grounds relied upon by the complainant.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3 and LRS 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:

### **§ 9317. Disciplinary Hearings; Fines**

A. If the Commissioner has reason to believe that an insurer is engaging in anticompetitive behavior he may hold a hearing pursuant to an Order to Show Cause, ordering the insurer to appear and show cause why it should not be sanctioned. In making a determination as to whether an insurer is engaging in anticompetitive behavior, the Commissioner may consider the factors listed in §9315.

B. The Commissioner may hold a disciplinary hearing if he has reason to believe that an insurer is using exempt rates with a policyholder who does not qualify as exempt commercial policyholders.

C. If the Commissioner finds that an insurer has violated or otherwise failed to comply with the provisions of this regulation he may impose such fines as are authorized by law.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3 and LRS 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:

### **§ 9319. Effective Date**

This regulation shall take effect on January 1, 2005.

AUTHORITY NOTE: Promulgated in accordance with LRS 22:3 and LRS 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:

### **FAMILY IMPACT STATEMENT**

Proposed Regulation 80, LAC 37: XIII. Chapter 93 §9301 et seq., regarding deregulation of insurance rates for exempt commercial policyholders should not have any known or foreseeable impact on the family as defined by LRS 49:972D or on family formation, stability or autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children
6. the ability of the family or a local government to perform the function as contained in the proposed rule.

A copy of the proposed regulation may be obtained by writing to the LDOI at the address shown below or by telephone at 225-342-4673. Copies may also be obtained from the Office of the State Register, 1051 North Third Street, Baton Rouge, LA 70802 or by calling at 225-342-5015.

Interested parties may submit oral or written comments on the proposed regulation to: Colleen Noël Wertz, Chief Attorney, Box 94214, Baton Rouge, LA 70804-9214; telephone: 225-342-4632. The deadline to submit comments is 5:00 p.m., October 22, 2004. A public hearing on the proposed regulation is scheduled for 10:00 a.m. on October 21, 2004. The hearing will be held in the Plaza Hearing Room, Poydras Building, 1702 North Third Street, Baton Rouge, Louisiana. Persons requiring special accommodations should contact the LDOI at 225-342-5203. No preamble regarding this proposed regulation is available.

J. ROBERT WOOLEY  
COMMISSIONER OF INSURANCE

**SYNOPSIS**  
Department of Insurance  
Office of the Commissioner

COMMERCIAL LINES INSURANCE RATE DEREGULATION  
LAC 37: XIII. Chapter 93  
PROPOSED REGULATION 80

LRS 22:1401.1 was adopted by Acts 2004, No. 878. It implements a regime of rate deregulation for most lines of commercial insurance written on commercial entities whose annual premiums exceed ten thousand dollars, excluding workers compensation and medical malpractice insurance unless the market is noncompetitive. The Act requires the Commissioner to promulgate a regulation for determining if the market is competitive or noncompetitive.

The regulation consists of the following provisions:

1. Authority
2. Scope and Applicability
3. Severability
4. Definitions
5. Types of Insurance Exempt from Rate Filing and Approval Process
6. Exempt Rates
7. Noncompetitive Market; Public Notice and Hearing
8. Disciplinary Hearings; Fines
9. Effective Date

Finally, there is a Family Impact Statement and a provision advising Interested Persons of the dates for submitting comments and the public hearing.

Section 9311 of the regulation gives examples of the types of lines of commercial insurance that will be exempt from prior approval if the Commissioner declares that the market is competitive. Section 9313 requires the Commissioner to hold a hearing, in compliance with the Open Meetings Act, prior to declaring the market competitive. Section 9315 contains the factors that the Commissioner is to consider in determining the status of the market for a line of business. If the market is competitive for a line of business then that insurance may be written with limited regulatory oversight. Only an informational filing is required. If the market is not competitive then the rates will be regulated on a “file and use” basis in accordance with LRS 22:1401.1B.

In addition to the hearings which can be called by the Commissioner to determine the status of the marketplace, §9315 also provides that the Commissioner shall hold a hearing if he receives a written complaint from an aggrieved policyholder. Additionally, the regulation states in §9317 that the Commissioner has authority to hold a hearing if he has reason to believe that an insurer is engaging in anticompetitive behavior or is using exempt rates with an insured who falls below the ten thousand dollar threshold set by Act 878.