

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW
YORK
TITLE 11. INSURANCE DEPARTMENT
CHAPTER V. RATES AND RATING ORGANIZATIONS
SUBCHAPTER D. RATE REGULATION AND PROMOTION OF COMPETITION
PART 160. RESPONSIBILITIES IN CONSTRUCTION AND APPLICATION OF RATES

Section 160.0 Preamble.

(a) The purpose of this regulation is to interpret and implement the purposes and provisions of article 23 of the Insurance Law, and set forth the responsibilities of insurer managements in the construction and application of rates. The regulation provides rules for the establishment and maintenance of property and casualty insurance rates.

(b) Insurer managements are responsible to policyholders; to those dependent upon the insurance enterprise for their livelihood; to shareholders in the case of stock companies; and to the public generally. Ordinarily, the legitimate interests and reasonable expectations of these groups are consistent. Sometimes they conflict. It is the duty of insurer managements to take cognizance of the interests and expectations of all and to make decisions which fairly and rationally balance the interests of all.

(c) In constructing and applying rates, it is the responsibility of insurer managements:

(1) to exercise competency in the evaluation of technical factors;

(2) to foster a competitive insurance market, to respond to competition, and to enhance the ability of insurance consumers to give meaning to competition by the exercise of free and informed choices;

(3) to seek reasonable levels of profits in the case of stock companies or surplus in the case of mutual companies;

(4) to provide equitable rate treatment among insureds and classes of insureds and to avoid unfair discrimination;

(5) to consider the need to create an adequate fund from which to pay losses and expenses and to foster an adequate supply of insurance;

(6) to consider the need of insurance consumers for rates which are reasonable and not excessive;

(7) to avoid predatory trade practices and anticompetitive behavior;

(8) to promote efficiencies and economies in operations and to share the benefits of such with insurance consumers;

(9) to recognize the public necessity that each insurer do its part in attaining the objective of making needed insurance coverages readily available to all eligible risks, and to this end to construct its rate structures and to pursue underwriting practices which maximize its ability to assist in meeting this need.

Section 160.1 Definitions.

(a) Except where the context or circumstances clearly indicate otherwise, the word insurer as used in article 23 and in these regulations includes two or more insurers: (1) under common management; or (2) under common controlling ownership or under other common effective legal control and in fact engaged in joint or cooperative underwriting, investment management, marketing, servicing or administration of their business and affairs as insurers.

(b) The terms group, or other organization of insurers which engages in joint underwriting or joint reinsurance, as used in section 2317 of the Insurance Law, shall include a joint underwriting or joint reinsurance arrangement or transaction by two or more insurers with respect to any single risk, regardless of whether such insurers are or are not members of any formal group, association or organization.

(c) An improperly charged rate is a rate charged to a policyholder or applicant or to a class of policyholders or applicants which is not in accord with the rating plan, rules, system, manual, or schedules, including prescribed modifications or variations required thereby, then in lawful use by an insurer. It includes cases of misclassification as well as other errors in the application of rate.

(d) The term rate service organization as used in article 23 has the meaning assigned it in section 2313 of the Insurance Law.

(e) Commercial risk insurance has the meaning assigned it in section 107(a)(47) of the Insurance Law.

(f) A dead bolt lock component, as defined in American National Standard for Auxiliary Locks and Associated Products (ANSI/BHMA A156.6-1992), sponsored and published by the Builders Hardware Manufacturers Association, Inc., 355 Lexington Avenue, New York, NY 10017 having an end which protrudes from, or is withdrawn into, the lock front by action of the lock mechanism. When the door is closed and the dead bolt thrown, it extends into a hole provided in the strike, locks the door, and does not retract with end pressure.

(g) Homeowners insurance has the meaning assigned it in section 2351(a) of the Insurance Law.

(h) Public entity and public entity insurance have the meanings assigned them, respectively, in section 107(a)(51) and section 107(a)(50) of the Insurance Law.

Section 160.2 Rates.

(a) Basis for rates in competitive markets. The purpose of the law is to encourage the freest and fastest response of prices to competitive and cost conditions, recognizing the special difficulties in rate-making in the insurance industry, with the fewest regulatory restraints on competition consistent with the public interest. In constructing rates, insurers and rating organizations must in good faith consider and base rates upon the factors named in sections 2303 and 2304. In refining and applying these factors, management shall be guided by sound judgment, accepted financial and insurance practices, the opinions of qualified technical experts within the areas of their expertise, and prevailing and anticipated conditions. The past interpretations and standards of the Insurance Department are not necessarily controlling. Ordinarily, in the construction of a rate or of rates, an insurer or rating organization will rely upon past loss and expense experience likely to have reliability as a predictor of the costs which may be experienced on the business which it is anticipated will be written at the rate or rates. In the exercise of informed and technically competent judgment, such experience may consist of an insurer's own past experience, the past experience of other insurers, or reasonable combination of both. For the rating organization, such experience may consist of the loss and expense experience of members, or members and subscribers, or of other insurers or rating organizations, or a reasonable combination of these. Where past expense or loss experience or both is not credible or is incomplete or where conditions affecting the validity of the experience have changed, or where it is reasonably anticipated that conditions affecting the validity of the experience are likely to change, rates may be predicated on informed judgment fairly exercised on the basis of the best available data.

(b) Expenses; allocation. Expense costs except where otherwise reasonably allocable ordinarily shall be spread over all insureds or classes on a fair and consistent basis, giving due consideration to the provisions of section 2304 relating to expenses.

(c) Rates pursuant to plan or system. Ordinarily, insurers must charge rates in accordance with a plan or system of classifications and rates established or adopted by the insurer. The plan or system may include provisions for modification of rates under prescribed circumstances or conditions, provided that any such modifications shall apply to all risks under the same or substantially the same circumstances or conditions. An insurer may satisfy this requirement by adopting the advisory plan or system of classifications and rates currently issued by a license rating organization. Nothing in these regulations shall preclude two or more insurers coming within the definition of insurer in section 160.1(a) of these regulations from using different rates, classifications, territories, rating plans, rating systems, underwriting rules or policy forms.

(d) Advisory rate. The fact that two or more authorized insurers, whether or not members or subscribers of a rating or advisory organization or of an actuarial, forms, rating or other committees thereof, use either consistently or intermittently the advisory rates or rating systems made or adopted by a rating organization, or the rules, classifications, policy or bond forms prepared by a rating or advisory organization, or, as members or subscribers, participate in the operations and functions of such rating or advisory

organization, or the fact that two or more insurers, either consistently or intermittently, authorize such a rating organization to act in their behalf pursuant to section 2316 shall not be deemed to constitute an agreement to charge or to adhere to the rates, rating plans, rating systems, rules, classifications, territories, or forms, or otherwise constitute anticompetitive behavior.

(e) Support for rates. Insurers must maintain in their files accessible to the department evidence of the factors and data considered in the making of rates. Such evidence may consist in whole or in part of the rates promulgated by licensed rating organizations. Rating organizations shall make available to members and subscribers the information underlying the schedules of rates, rating plans, rules, classifications and territories, made or adopted by such rating organization. Such information shall be available in such form and detail as will reasonably permit the management of each member and subscriber insurer to ascertain the basis on which the schedules of rates, rating plans, rules, classifications and territories are constructed.

(f) Review of rates. Insurers and rating organizations shall review their rates at reasonable intervals to ascertain whether changes in conditions or developed loss and expense experience or other considerations indicate a need for adjustment of rates. If such review indicates a need for rate adjustment, an insurer or rating organizations shall promptly undertake the process of effecting such adjustment. An insurer may comply with this subdivision by relying upon the review at reasonable intervals by the rating organizations of which it is a member or a subscriber, provided it has reasonable grounds to believe that the rating organization itself remains in compliance with this subdivision. What constitutes a reasonable interval will vary with the kind or class or insurance involved, the volume written, and other factors and should be determined by the exercise of sound judgment and with reference to the reasonable and customary practices of business.

(g) Prevention of improperly charged rates. Insurers shall establish adequate procedures to minimize the occurrence of improperly charged rates and shall in fact pursue such procedures. Use of the audit services of a licensed rating organization shall constitute an adequate such procedure unless the superintendent informs the insurer otherwise. The fact that an insurer has, in writing, authorized a rating organization to act upon its behalf in complying with any of its obligations under articles 23 until such time as the authorization is supplemented, amended or revoked shall not be deemed to be in violation of the requirements of section 2316.

Section 160.3 Premium adjustments; when required.

(a) The decision as to whether an order rendered after a hearing as provided in section 2320 will include provision for retroactive premium adjustment is a matter to be determined within the sound discretion of the superintendent, exercised in consideration of all the facts and circumstances of the particular case with the primary objective of effecting an equitable adjustment between the insurer and its policyholders. Premium adjustment is not a penalty and the fact that premium adjustment is ordered does not necessarily imply that the insurer has violated the law.

(b) Where a rate has been constructed and applied in the good faith exercise of reasonable judgment and competence and in fair consideration of the relevant factors and interests and in accordance with the procedures prescribed in the law and these regulations, retroactive premium adjustment will not be ordered merely because the rate is determined to be excessive by reason of actual loss or expense experience more favorable than anticipated nor merely because the rate is determined to be inadequate by reason of actual loss or expense experience less favorable than anticipated.

(c) If an insurer has established and pursues an adequate procedure to minimize the occurrence of improperly charged rates as described in section 160.2(g) above, the superintendent will limit himself to a request for appropriate premium adjustment in cases of improperly charged rates which may be discovered. If the insurer has not established and pursued such procedures, improperly charged rates may be treated as violations of the law within the meaning of section 2320

Section 160.4 Rates not in accordance with law.

Penalties. The adoption and charging of a rate will not be deemed to be a violation of law within the meaning of section 2320(c) where it has been constructed and applied in the good faith exercise of reasonable judgment and competence and in fair consideration of the relevant factors and interests and in accordance with the procedures prescribed in the law and these regulations, even though it may subsequently be determined by the superintendent that the rate does not comply with the standards of section 2303 of the Insurance Law.

Section 160.5 Prohibition of informal discussion of rate changes.

Since both the overall policy and specific provisions of the new law provide for a system under which there is to be no prior review of rates or rate changes, it is essential, in order to preclude later question about the legality of rate on purely procedural grounds, that there be no such prior review. Accordingly, department and industry personnel shall not discuss contemplated rates or rate changes in advance of their taking effect. The only exception would be in situations where the consideration of novel questions of law, policy or statistical method is involved and then only if an insurer or rating organization has made a written request to the superintendent for prior consultation and the request has been granted in writing by the superintendent.

Section 160.6 Premium reductions for loss prevention measures.

(a)(1) Insurers may provide for a reduction in the rates of homeowners insurance premiums where all entrances leading to the insured residence premises from commonly accessible areas are equipped with dead bolt locks. The amount of reduction shall be determined in accordance with the standards set forth in section 160.2 of this Part.

(2) In order to qualify for a premium reduction, the locks shall be installed in accordance with the manufacturer's specifications, and shall meet the applicable operational and security standards for such devices prevailing in the building hardware manufacturing industry for a Grade 3 lock. A Grade 3 lock is described in Appendix A of ANSI/BHMA

A156.5-1992 as generally adequate to withstand an attack of opportunity and where the attack is expected to be of short duration.

(b)(1) Insurers shall provide for a reduction in the rates of homeowners insurance premiums, where hurricane/storm shutters or hurricane resistant laminated glass windows or doors have been installed on all exterior wall openings in the structure of the dwelling.

(2) The shutters or laminated materials must be designed and properly installed in accordance with the manufacturer's specifications to withstand external pressure and wind borne debris from a storm with sustained wind speed of at least 110 miles per hour or a storm surge of 8 feet above normal.

(3) The amount of the reduction shall be determined in accordance with the standards set forth in section 160.2 of this Part. In establishing the premium reduction differentials applicable to systems qualifying for a reduction, insurers shall consider the effectiveness of permanently installed systems relative to those that require manual action in order for the system to be operative.

(c)(1) Insurers shall provide for a reduction in the rates applicable to coverage for the real property component of policies providing commercial risk insurance and public entity insurance where hurricane resistant laminated glass windows or doors have been installed on all exterior wall openings in the building structure. The amount of the reduction shall be determined in accordance with the standards set forth in section 160.2 of this Part.

(2) The laminated materials must be designed and properly installed in accordance with the manufacturer's specifications to withstand external pressure and wind borne debris from a storm with sustained wind speed of at least 110 miles per hour or a storm surge of eight feet above normal.

(d)(1) Insurers shall provide for a reduction in the rates of insurance premiums for commercial motor vehicles having a gross vehicle weight rating in excess of ten thousand pounds provided the vehicle is equipped with factory installed auxiliary running lamps. Such lamps shall be designed, manufactured, and installed to enhance the conspicuously and safety of a vehicle so equipped and to effectively communicate to operators of other vehicles the intentions or operational maneuvers of the driver of the vehicle.

(2) The premium reduction shall apply to bodily injury liability, property damage liability, personal injury protection, medical payments and collision coverage. The amount of reduction shall be determined in accordance with the standards set forth in section 160.2 of this Part.

(3) Auxiliary running lamps are added in an attempt to improve vehicle visibility and contribute to highway safety. For the purposes of this subdivision, auxiliary running lamps shall be interpreted as supplemental "combination side marker signal lamps" and must conform to the following criteria:

- (i) they must supplement the standard vehicle lighting system which is required for new vehicles by Federal standard, New York State Vehicle and Traffic Law and regulation;
 - (ii) they shall be located along the left and right sides of a single or combination vehicle, consistent with the same required height as side marker lamps, as close as practical to no closer than four feet nor more than ten feet apart on center;
 - (iii) all of these lamps shall have both the side marker and signal lamp function. Lamps must be amber in color. The rear most side marker must be red in color;
 - (iv) they may automatically illuminate when the motor vehicle ignition is turned on or in the run position and shall only flash in conjunction with the selection of the left or right signals; and
 - (v) the lights must be of an approved type, complying with side marker and signal lighting criteria consistent with prevailing federal standards.
- (4) For the purposes of this subdivision, the term "factory installed" shall mean vehicles equipped and delivered new with auxiliary running lamps.

11 NYCRR 160.7 Rules to determine the amount of return premium upon cancellation of that part of a policy covering insured loss under the terrorism risk insurance act

(a) Definition.

For the purpose of this section, the term "insured loss" shall have the meaning ascribed in section 102(12) of the federal Terrorism Risk Insurance Act of 2002 (Pub. L. 107-297).

(b) Purpose.

Some policies that provide coverage for insured loss may provide that the policy premium is fully earned upon policy issuance. Upon policy termination, this provision may unjustly enrich the insurer by allowing it to retain the entire unearned premium. This treatment results in an excessive rate for the period during which coverage was in force. This section establishes the rules to apply when determining the amount of return premium upon policy cancellation for that portion of a policy providing coverage for insured loss.

(c) Applicability.

(1) This section applies only to the coverage for insured loss in every policy of the types specified in paragraphs (2) and (3) of this subdivision, issued or renewed on or after the effective date of this section, where the premium for such coverage is divisible from the remainder of the policy premium.

(2) This section applies to coverage for insured loss under the kinds of insurance that are subject to article 23 of the Insurance Law, except the following kinds of insurance as defined in section 1113(a) of the Insurance Law:

- (i) surety as defined in section 1113(a)(16)(C), (D), (E), and (F);
- (ii) credit insurance;
- (iii) title insurance;
- (iv) residual value insurance;
- (v) mortgage guaranty insurance;
- (vi) credit unemployment insurance;
- (vii) financial guaranty insurance;
- (viii) gap insurance; and
- (ix) prize indemnification insurance.

(3) This section also applies to coverage for insured loss under policies written by assessment cooperative property/casualty insurance companies.

(d) Requirements for determining the amount of return premium upon policy cancellation for that portion of a policy providing coverage for insured loss.

(1) A policy premium may not be considered fully earned upon policy issuance. However, this prohibition does not apply to audit premiums or other premium adjustments determined after the policy period has expired.

(2) Every policy shall be subject to a rating rule that provides for a return of unearned premium in the event of cancellation of the policy before the policy expiration date.

(3) Policies cancelled by the insurer. The unearned premium for a policy cancelled by the insurer shall be calculated on a daily pro rata basis even if the reason for cancellation is nonpayment of premium.

(4) Policies cancelled by the insured.

(i) Except as otherwise provided in this paragraph, the unearned premium for a policy cancelled by the insured shall be calculated on a daily pro rata basis.

(ii) In recognition of certain fixed administrative and processing costs, a short rate method of calculating the return premium may be used in which the return premium is .90 or greater of the daily pro rata unearned premium.

(iii) If the policy is for a specific event or a particular project, or if the nature of the exposure is seasonal or otherwise not evenly distributed over the policy term, an alternative method may be used to determine an appropriate return premium, where such method appropriately reflects the distribution of the exposure.

(e) Requirements for financed premiums.

Notwithstanding any other provision of this section, in regard to an insurance contract the premium for which is advanced under a premium finance agreement, an insurer shall comply with section 3428(d) of the Insurance Law.