NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
CONSOLIDATED

FIFTH AMENDMENT TO 11 NYCRR 161
(INSURANCE REGULATION 129)
FLEXIBLE-RATING SYSTEM; RATING PLANS;
TORT REFORM FILING REQUIREMENTS

FIRST AMENDMENT TO 11 NYCRR 163
(INSURANCE REGULATION 153)
FLEXIBLE RATING FOR NONBUSINESS AUTOMOBILE INSURANCE POLICIES

I, Adrienne A. Harris, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301 and 2328 of the Insurance Law, do hereby promulgate the following amendments to Parts 161 and 163 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon publication of the Notice of Adoption in the State Register, to read as follows:

(Matter in brackets is deleted; new matter is underlined)

Subdivision (c) of section 161.3 is amended as follows:

(c) These exempt markets will thus remain subject to the competitive rating system. With the exception of continuing prior approval pursuant to section 2305(b) or section 2328 of the Insurance Law for such markets as public livery, medical malpractice, workers' compensation, title and mortgage guaranty insurance, and individual consent-to-rate submissions, flex-rating under this Part will apply to all other commercial risk, professional liability and public entity insurance policies, commencing with rate filings submitted to the department on and after September 26, 1986. Flex-rating under this Part does not apply to personal lines property/casualty insurance markets or to nonproperty/casualty insurance markets.

The title of Part 163 is amended as follows:

FLEXIBLE RATING FOR NONBUSINESS AUTOMOBILE AND FOR HIRE MOTOR VEHICLE INSURANCE POLICIES

Section 163.0 is amended as follows:

(a) On June 30, 2008, the Governor signed chapter 136 of the Laws of 2008 into law to enhance competition in the nonbusiness motor vehicle insurance market, by adding a new Insurance Law section 2350. Chapter 136 replaces the prior approval system, in effect since 2001 for nonbusiness motor vehicle insurance rates, with a flexible rating (flex-rating) system. The new system, which takes effect on January 1, 2009, is a blend of prior approval and competitive rating. The system allows periodic overall average rate changes up to five percent on a file and use basis[,] and requires the superintendent's prior approval of overall average rate increases above five percent in any [twelve] 12-month period. The new section 2350 requires the superintendent to promulgate rules and regulations implementing the new flex-rating system.

(b) On May 9, 2025, Governor Kathy Hochul signed into law part CC of chapter 58 of the Laws of 2025 to enhance competition in the for hire motor vehicle insurance market by amending Insurance Law section 2328. Starting December 1, 2025, Insurance Law section 2328(c) permits an insurer to implement overall average (for all coverages combined) rate level increases (but not decreases) above an insurer's rates in effect that are up to a percentage specified in a regulation promulgated by the superintendent, but not to exceed five percent during any 12-month period, without the superintendent's prior approval, after submitting an informational filing pursuant to Insurance Law section 2310.

Section 163.1 is amended to read as follows:

For the purpose of this Part, the following definitions shall apply:

(a) *Base rate* means the dollar charge for a given coverage for one car year prior to the application of rating factors.

(b) *Car year* means insuring a motor vehicle for one year.

(c) *Coverage* means the following motor vehicle insurance coverages:

(1) no-fault (personal injury protection), residual bodily injury liability, property damage liability, statutory uninsured motorists, supplementary uninsured/underinsured motorists, comprehensive, and collision; and

(2) any other motor vehicle coverage.

(d) *Current average rate for a given coverage* means the weighted average of an insurer's latest filed base rates modified by the applicable rating factors for each motor vehicle for the given coverage with the weights proportional to the latest available number of car years associated with each rating factor, or any materially equivalent calculation.

(e) *Current overall average rate* means:

(1) the weighted average of the current average rate for:

(i) all coverages listed in paragraph [(a)](c)(1) of this section; and

(ii) any other motor vehicle coverages not listed in paragraph [(a)](c)(1) of this section, if the insurer proposes a change in the rate for that coverage, with the weights proportional to the latest available number of car years for the respective coverages; or

(2) any materially equivalent calculation.

(f) *Effective date* means the date a revised set of base rates or rating factors shall apply to all existing nonbusiness automobile insurance policies or for hire motor vehicle insurance policies as such policies are

renewed. If a filing only applies to new business, then the effective date means the date that an insurer may first write new business.

(g) *File and use* means the process by which an insurer files with the superintendent a proposed overall average rate change that is within the flex-band or within the permissible flex increase, and then uses the proposed overall average rate change or increase without having to obtain the superintendent's prior approval.

(h) *Flexibility band* or *flex-band* means the range of overall average rate level increase or decrease (up to ±5 percent) within which an insurer may change its [motor vehicle] nonbusiness automobile insurance policy rates without having to obtain the superintendent's prior approval.

(i) *For hire motor vehicle insurance policy* means a policy covering losses or liabilities arising out of ownership of a motor vehicle used principally for the transportation of persons for hire, other than a bus or a school bus as defined in Vehicle and Traffic Law sections 104 and 142.

(j) *Motor vehicle* has the meaning set forth in Insurance Law section 5102(f) [of the Insurance Law].

[(j)] (k) *Nonbusiness automobile insurance policy* means a contract of insurance covering losses or liabilities arising out of the ownership, operation or use of a motor vehicle that is predominately used for nonbusiness purposes, when a natural person is the named insured.

[(k)] (l) *Permissible flex increase* means the overall average rate level increase of up to five percent by which an insurer may change its for hire motor vehicle insurance policy rates without having to obtain the superintendent's prior approval.

(m) *Proposed average rate for a given coverage* means the weighted average of an insurer's proposed base rates modified by the applicable rating factors for each motor vehicle for the given coverage with the weights proportional to the latest available number of car years associated with each rating factor, or any materially equivalent calculation.

[(l)] (n) *Proposed overall average rate* means:

(1) the weighted average of the proposed average rate for:

(i) each coverage listed in paragraph [(a)](c)(1) of this section regardless of whether the insurer is filing a change for that coverage; and

(ii) any other motor vehicle coverages not listed in paragraph [(a)](c)(1) of this section if the insurer proposes a change in the rate for that coverage, with the weights proportional to the latest available number of car years for the respective coverages; or

(2) any materially equivalent calculation.

[(m)] (o) *Proposed overall average rate change* means the percentage difference between the proposed overall average rate and the current overall average rate. For example, if the proposed overall average rate is

$1,200 and the current overall average rate is $1,000, then the proposed overall average rate change is 20 percent ({(1,200/1,000)-1} x 100).

[(n)] (p) *Rating factors* means the various elements that are applied or added to the base rates to obtain the actual [nonbusiness automobile] insurance policy premiums. These include classification factors based on the age, sex, and marital status of the insured, territorial rating factors, merit rating factors based on the driving record of the insured, increased limit factors, motor vehicle symbol and model year rating factors, and multi-tier rating factors.

The title of section 163.2 is amended as follows:

Rules and standards governing proposed file and use overall average rate changes [for nonbusiness automobile insurance policies].

Subdivisions (a), (b),(c) and (d) of section 163.2 are amended and a new subdivision (e) is added as follows:

(a) An insurer may implement a proposed overall average rate increase on a file and use basis provided that the change is within the five percent flex-band or permissible flex increase. If the proposed overall average rate increase exceeds the five percent flex-band or permissible flex increase, then the insurer shall obtain the superintendent's prior approval before implementing the change.

(b) During any 12-month period, an insurer may implement no more than two overall average rate increases on a file and use basis provided that the cumulative effect of the increases shall be within the five percent flex-band or permissible flex increase. If a proposed overall average rate increase combined with a prior rate increase implemented within a 12-month period of the proposed effective date of the request exceeds the five percent flex-band or permissible flex increase, then the insurer shall obtain the superintendent's prior approval before implementing the change. The cumulative effect of two or more rate charges in a 12-month period is derived in a multiplicative manner. For example, if an insurer implements on a file and use basis a +2.9 percent overall average rate increase effective February 1, [2009] 2026 and a +2 percent overall average rate increase effective August 1, [2009] 2026, then the insurer may not implement another file and use overall average rate increase before February 1, [2010] 2027. However, at such time, the insurer may implement an overall average rate increase up to a maximum of +2.9 percent.

(c) [An] Regarding a nonbusiness automobile insurance policy, an insurer may implement an overall average rate decrease on a file and use basis up to a maximum of five percent at any one time from the overall average rate currently in effect.

(d) Notwithstanding any provision of this Part, an insurer shall not implement an overall average rate increase on a file and use basis subsequent to an overall average rate increase greater than the five percent flex-band or permissible flex increase that the superintendent has already prior approved in the 12-month period immediately preceding the effective date of the proposed increase.

(e) Pursuant to Insurance Law section 2328(c), an insurer shall not implement a rate change under Insurance Law section 2328(c) or this Part when the insurer: (1) has submitted a rate filing under Insurance Law section 2328(a) and the superintendent has not yet approved it; or (2) is in the process of phasing in its rates pursuant to the superintendent's approval under Insurance Law section 2328(a).

Subdivision (b) of section 163.3 is amended as follows:

(b) [An] Regarding a nonbusiness automobile insurance policy, an insurer may adjust its rating factors in separate and distinct filings independent of an overall average rate change. If these filings have no overall average rate impact, then the insurer may implement them on a file and use basis and the insurer shall not be precluded from implementing a file and use change for an overall average rate increase within the time periods specified in section 163.2(b) of this Part. For example, the introduction of a physical damage coverage's model year rating factor for a new model year that is consistent with an existing model year rating rule is not subject to prior approval. These filings shall be consistent with the rate change limitations for individual insureds contained in section 163.4 of this Part.

The title of section 163.4 is amended as follows:

Rules and standards governing [nonbusiness automobile] insurance policy premium change limitations for individual insureds as a consequence of file and use filings.

Section 163.4 is amended as follows:

(a) In any 12-month period, the total premium on any nonbusiness automobile insurance policy shall not change by more than 30 percent as a consequence of file and use filings, and the total premium on any for hire motor vehicle insurance policy shall not increase by more than 30 percent as a consequence of file and use filings. An insurer shall meet this requirement by adjusting the base rates or rating factors in the file and use filing. An insurer shall not cap an individual insured's premium as a final step. If a filing produces an annual total premium change on [an] a nonbusiness automobile insurance policy that exceeds the 30 percent maximum, or if a filing produces an annual total premium increase on a for hire motor vehicle insurance policy that exceeds the 30 percent maximum or produces an annual total premium decrease on a for hire motor vehicle insurance policy, then the filing shall be subject to the superintendent's prior approval.

(b) Changes in the premium of a nonbusiness automobile insurance policy or for hire motor vehicle insurance policy as a consequence of changes in an insured's rating characteristics or changes in the coverages or the amounts of coverage being purchased shall not be considered within the calculation of the individual insured premium limitation contained in subdivision (a) of this section. For example, if an insured has an accident during the prior year and incurs a 25 percent surcharge or an uptier, then this 25 percent surcharge/uptier shall not be considered within the individual premium limitation. Similarly, if a change in the age of an insured results in the application of a different classification factor, the rate effect attributable to that classification change shall also not be considered within the individual premium limitation.

Section 163.5 is amended as follows:

An insurer shall include support for all proposed changes specified in each filing submitted on a file and use basis. The support shall include the specific reasons for the proposed changes, and any other material information required by Insurance Law section 2304 [of the Insurance Law] (*e.g.,* the underlying data upon which the change is based). Filings submitted on a file and use basis shall be subject to the superintendent's review in accordance with Insurance Law article 23 [of the Insurance Law].

Subdivisions (a) and (b) of section 163.6 are amended as follows:

(a) An insurer shall include support for all proposed changes specified in each filing subject to the superintendent's prior approval. The support shall include the specific reasons for the proposed changes, and any other material information as required by Insurance Law section 2304 [of the Insurance Law].

(b) Subject to all other requirements of this Part and Insurance Law article 23 [of the Insurance Law], an insurer may adjust rating factors associated with territories or classifications as part of its file and use filing, provided that there are no changes to the underlying definitions, which remain subject to the superintendent's prior approval pursuant to Insurance Law article 23 [of the Insurance Law]. Examples of rating classifications include discounts, surcharges, merit rating plans or multi-tier programs.

KATHY HOCHUL
Governor

ADRIENNE A. HARRIS
Superintendent

CERTIFICATION

I, Adrienne A. Harris, Superintendent of Financial Services, do hereby certify that the foregoing is the consolidated Fifth Amendment to Part 161 (Insurance Regulation 129) and First Amendment to Part 163 (Insurance Regulation 153) of Title 11 of the Official Compilation of the Codes, Rules and Regulations of the State of New York, signed by me on September 11, 2025 pursuant to the authority granted by Financial Services Law sections 202 and 302 and Insurance Law sections 301 and 2328, to take effect upon the publication of the Notice of Adoption in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed rule was published in the New York State Register on July 9, 2025. No other publication or prior notice is required by statute.

Signed copy filed with Department of State
Adrienne A. Harris
Superintendent of Financial Services

Date: September 11, 2025