

R590. Insurance, Administration.

R590-121. Rate Modification Plan Rule.

R590-121-1. Purpose.

The purpose of this rule is to establish criteria for the modification of manual rates through the application of insurer rate modification plans and to the reporting of pertinent information concerning the utilization of such plans, in order to determine whether rates developed thereunder meet the standards of the rating law. Such information may also be utilized to assist in monitoring competition in accordance with Section 31A-19a-201.

R590-121-2. Authority.

This rule is promulgated by the insurance commissioner pursuant to the authority provided under Subsections 31A-2-201(3) and (4), General Duties and Powers; Section 31A-2-203, Examinations; Section 31A-2-204, Conduct of Examinations; Section 31A-2-205, Examination Expenses; Sections 31A-19a-201, 31A-19a-202 and 31A-19a-203, Rate Standards; and Section 31A-23a-402, Unfair Marketing Practices.

R590-121-3. Scope.

1. This rule applies to every authorized property and casualty insurer and every rate service organization required to file rates and supplementary information under Section 31A-19a-203.

2. This rule applies to those classes of insurance, monoline or packaged, commonly known as commercial vehicle, commercial general liability and commercial property, workers' compensation and employers' liability insurance. It does not apply to professional liability insurance, inland marine risks which, by general custom, are not written according to manual rules or rating plans, and consent-to-rate risks submitted under Subsection 31A-19a-203(6).

R590-121-4. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Sections 31A-1-301 and 31A-19a-102, and in addition thereto the following:

1. "Experience rating plan" means any rating plan or system whereby a manual rate for insurance is adjusted or modified based on the past loss experience of the insured.

2. "Manual rate" means a rate, designed to apply on a generic basis to similar risks within the same market, filed with the department by an insurer or rate service organization and made part of the rating manual used by an insurer or rate service organization.

3. "Rate modification plan" means a rating plan or procedure

which provides a listing of various risk characteristics or conditions and a range of modification factors which may be applied for those characteristics or conditions to the manual rate of a particular insurance risk. The effect of the modification factor is to increase (debit) or decrease (credit) the manual rate. Rate modification plans include plans commonly called Schedule Rating Plans and Individual Risk Premium Modification Plans.

R590-121-5. Rule.

1. Rate modification plans.

Rate modification plans, justified according to the standards herein, are allowed by the insurance code. The commissioner has determined that the use of unjustified rate modification plans is not reasonable, is not objective, and is unfairly discriminatory. The use of unjustified rate modifications plans in the rating of commercial property and casualty insurance risks located in Utah is prohibited. Pursuant to Subsection 31A-2-201(4), the commissioner may order the disapproval of any rate modification plan that does not establish reasonable standards for measuring probable variations in hazards, expenses, or both, as required by Subsection 31A-19a-202(3). Any insurer subject to such an order may request a hearing pursuant to Subsection 63G-4-203 within 30 days of the date of the order. The following elements shall be considered in determining whether or not a rate modification plan is justified:

a. rate modification plans must limit their application to maximum debits or credits of 25%. Modifications generated by loss experience or company expense experience are not subject to this limitation;

b. rate modification plans must be based only on rating characteristics not already reflected in the manual rates. The plans must clearly indicate the objective criteria to be used;

c. any rate modification plan designed to be applied simultaneously to property, liability, or vehicle coverage shall contain reasonable factors that give appropriate recognition to the distinct exposures involved in such coverages;

d. rate modification plans must provide that when a risk is rated above the manual rate (debited), an insured, applicant, or their agent or broker, upon request, will be advised by the insurer of the factors which resulted in the adverse rating so that the insured or applicant will be fairly apprized of any corrective action that might be appropriate with respect to the insurance risk;

e. An insurer's filing of changes or revisions to rate modification plans it previously filed may not result in the elimination of a debit or credit established under the prior plan

for a risk currently insured by the insurer. Changes in established debits or credits for risks currently insured must be based on a change in the risk and not on a change in the provisions of a rate modification plan.

f. All initial and succeeding filing of rate modification plans must be submitted according to established filing procedures and must include a complete copy of the plan, even if only minor changes are being made. To facilitate the commissioner's analysis of the rate modification plan, the filing must also include a letter or filing memorandum from the insurer which provides: (1) a comparison of the proposed changes to any existing plan as currently filed; (2) reasons and justification for the proposed changes; and (3) a statement of the estimated number of Utah insureds affected by the changes and the estimated Utah premium dollar impact of the changes.

2. Application of rate modification plans.

The following elements shall be considered in determining whether or not the application of a rate modification plan is justified. The commissioner considers the misclassification of a risk to be a modification without justification:

a. rate modification plans must be used to acknowledge variance in risk characteristics and not merely to gain competitive advantage or for any other purpose;

b. once a company has filed a rate modification plan, its use is mandatory. The plan must be applied uniformly in a non-discriminatory manner for all eligible classes of risk even if the application of the plan results in a zero modification or no change in a previous modification applied;

c. once a rate modification plan has been applied to a risk and a credit or debit established, no changes in the established credit or debit can be made without appropriate justification and documentation;

d. individual underwriting files must contain the specific criteria and document the particular circumstances of the risk that support each debit or credit. This documentation must be present in the file to enable the commissioner to verify compliance with this rule. Documentation may include, but is not limited to, inspection reports, photographs, agent observations and findings, insured's formal safety plans, premises evaluations, and narrative reports covering other aspects of the risk;

e. Individual underwriting files must also contain documentation of the underwriter's evaluation of the risk under the rate modification plan. This shall consist of a worksheet which describes in some fashion the risk characteristics of the filed plan and the range of credits or debits allowed for each risk characteristic. The completed worksheet shall contain the credits, debits, or both assigned to the risk characteristics by

the underwriter and the sum of the credits and debits assigned. A narrative description of the underwriter's evaluation process shall be included in the worksheet. The worksheet shall list the date of the initial and any subsequent evaluation and the signature of the person(s) making the evaluation(s). A previous worksheet may be used where no change in the risk characteristics are indicated as long as a current date and signature are entered onto the worksheet.

3. Experience rating plans.

Experience rating plans shall be calculated from at least the last three years' premium and loss data. Premium and loss figures used in the calculation must be verifiable or justifiable.

4. Reporting of pertinent information.

On the request of the commissioner, an insurer authorized to write any insurance in this state to which this rule applies shall submit data to the commissioner establishing the relationship of the aggregate premiums actually charged policyholders by the insurer for each line of commercial insurance to the aggregate premium that would have been produced by the insurer's filed unmodified rates for that line of commercial insurance. A rate service organization may file the data on behalf of the insurer.

5. Rate compliance examinations.

To determine compliance with this rule the commissioner may order a rate compliance examination be made of any insurer to which this rule applies. Any examination permitted under this rule shall be conducted pursuant to Sections 31A-2-203 and 31A-2-204. All examinations and examination-related expenses shall be paid by the insurer, as provided by Section 31A-2-205.

R590-121-6. Penalties.

Any insurer that fails to comply with the provisions of this rule shall be subject to the forfeiture provisions of Section 31A-2-308.

R590-121-7. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision shall not be affected thereby.

R590-121-8. Dissemination.

Each insurer or rate service organization is instructed to distribute a copy of this rule to all personnel engaged in activities requiring knowledge of this rule, and to instruct them as to its scope and operation.

KEY: insurance law

Date of Enactment or Last Substantive Amendment: 1994

Notice of Continuation: December 12, 2016

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-203; 31A-19a-201; 31A-19a-202; 31A-19a-203; 31A-23-302