§ 2328. For hire motor vehicle insurance rates; flexible rating; prior approval. (a) An insurer shall submit to the superintendent, for the superintendent's prior approval, its rates, rating plans, rating rules, and rate manuals applicable to motor vehicle insurance, including no-fault coverages under article fifty-one of this chapter, by August first, two thousand twenty-five and at least every two years thereafter, unless the superintendent requests the rates, rating plans, rating rules, or rating manuals more frequently. For rates submitted on or before August first, two thousand twenty-five, the superintendent may approve the phasing in of rates that meet the standards set forth in section two thousand three hundred three of this article if the superintendent determines that it would be in the best interests of the people of this state.

(b) Except as provided in subsection (c) of this section, no changes in rates, rating plans, rating rules and rate manuals applicable to motor vehicle insurance, including no-fault coverages under article fifty-one of this chapter, shall be made effective until approved by the superintendent, notwithstanding any inconsistent provisions of this article.

(c) Starting December first, two thousand twenty-five, overall average (for all coverages combined) rate level increases 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 twelve-month period, may take effect without the superintendent's prior approval after submitting an informational filing pursuant to section two thousand three hundred ten of this article. An insurer shall not implement more than two rate increases pursuant to this section, the total of which shall not exceed the limitation specified in a regulation, during any twelve-month period. An insurer also shall not implement a rate increase within the limitation specified in a regulation until the onset of the new policy period and unless the insurer, at least thirty but not more than sixty days in advance of the end of the policy period, mails or delivers to the named insured, at the address shown in the policy, a written notice of its intention to change the rate. The specific reason or reasons for the rate change shall be stated in or shall accompany the notice. An insurer shall not implement a rate change under this subsection when the insurer: (1) has submitted

a rate filing under subsection (a) of this section 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 subsection (a) of this section.

(d) The superintendent shall monitor the degree and continued existence of competition and the effectiveness of flexible rating in this state on an on-going basis. In doing so, the superintendent shall utilize the following standards or factors:

(1) the standards contained in section two thousand three hundred eight of this article;

(2) existing relevant information, analytical systems and other sources, or rely on some combination thereof;

(3) the number of insurers or group of affiliated insurers actively engaged in providing coverage, taking into account the specialization traditionally required for insurance in the particular rating territory;

(4) measures of market concentration and changes of market concentration over time, which may include the use of Herfindahl-Hirschman Index (HHI) and the United States Department of Justice merge guidelines for an unconcentrated market ease of entry, and the existence of financial or economical barriers that could prevent new firms from entering the market;

(5) the extent to which any insurer or group of affiliated insurers controls all or a dominant portion of the market has actively sought to prevent competition;

(6) whether the total number of companies writing the line of insurance in this state is sufficient to provide multiple options;

(7) the availability of insurance coverage to consumers;

(8) the opportunities available to consumers in the market to acquire pricing and other consumer information; and

(9) any other factors relevant to inquiry.

Such activities may be conducted internally within the department, in cooperation with other state insurance departments, through outside contractors and/or in any other appropriate manner, provided that the department shall report to the speaker of the assembly, temporary president of the senate, and governor on the effectiveness of flexible rating on the for hire motor vehicle market by December first, two

thousand twenty-seven and every two years thereafter.

(e) This section shall apply only to policies covering losses or liabilities arising out of ownership of a motor vehicle used principally for the transportation of persons for hire, including a bus or a school bus as defined in sections one hundred four and one hundred forty-two of the vehicle and traffic law, provided, however, that subsections (a) and (c) of this section shall not apply to a bus or a school bus as defined in sections one hundred four and one hundred forty-two of the vehicle and traffic law.