

New York State Department of Financial Services
Public Notice
11 NYCRR Part 16 (Insurance Regulation 86)

Introduction

This Part implements Article 63 of the Insurance Law. Article 63 authorizes special risks that are jumbo in dimension, exotic in nature, or issued to a large commercial insured to be written in the “free trade zone.” Insurance companies generally do not have to file the rates and forms with the Department of Financial Services for risks written in the “free trade zone” unless the Superintendent reimposes filing or approval requirements.

However, the rates and policy forms used for the special risks must comply with the governing standards set forth in the Insurance Law and regulations promulgated there under.

Pursuant to section 16.1(j) of part 16 of title 11 of the New York Compilation of Codes, Rules and Regulations (“Regulation 86”), “special risks” are specifically identified and categorized into three groups: Class (1), Class (2) and Class (3). Class (2) includes coverages that are:

- (i) of an unusual nature, a high loss hazard, or difficult to place; and
- (ii) identified on the list set forth in section 16.12(e) of Regulation 86 or additions thereto made pursuant to section 16.8(f) of Regulation 86.

Section 16.8(f) establishes procedures for applying to the Superintendent to add a class to the list of eligible Class 2 risks enumerated in section 16.12(e). If the Superintendent, after review of the application, determines that it should be added to the list, it is published in the State Register, pursuant to section 16.8(f)(3).

Additions to Class 2 risks are effective on the date specified in the Public Notice that is published in the State Register. The text of Regulation 86 is periodically amended to incorporate the Class 2 risks added via publication in the State Register.

Notice of Additions

Pursuant to Article 63 of the Insurance Law and section 16.8(f)(3) of Regulation 86, the Department of Financial Services hereby gives notice of the following additions to Section 16.12(e), Class 2 Risks, effective upon publication in the State Register.

The Statistical Code designation 2-50002 has been assigned to the classification, “Cyber Risks” The classification description is as follows: First and third party commercial lines coverage for loss or liability arising out of or relating to cyber risks, including data privacy breaches and other privacy risks, networks security risks, electronic advertising, intellectual property infringement and virus risks.

The Statistical Code designation 2-50003 has been assigned to the classification, “Directors and Officers Liability Insurance-Private Package Policies.” The classification description is as follows: Directors and Officers, Employment Practices Liability, Fiduciary, Crime, and Kidnap and Ransom containing primary liability limits of at least \$5,000,000.

The Statistical Code designation 2-50004 has been assigned to the classification, “Mergers and Acquisitions.” The classification description is as follows: Mergers and Acquisitions Liabilities - insurance for claims arising from merger and acquisition transactions, including all related coverages that are permissible pursuant to the New York Insurance Law.

The Statistical Code designation 2-50005 has been assigned to the classification, “Product Liability for Fire Extinguishers and Accessories.” The classification description is as follows: Lead and Wire Seal, Hose, Horn and Nozzle Assemblies, Foam, Buckets, Reducer, Calcium Chloride, Sodium Bicarbonate, and Fire Hats.

The Statistical Code designation 2-50006 has been assigned to the classification, “Attorney’s Errors and Omissions.” The classification description is as follows: Coverage for attorneys that are employed as lawyers by a business entity (not a law firm).

The Statistical Code designation 2-50007 has been assigned to the classification, “Aviation Liability Insurance.” The classification description is as follows: Coverage against third party liability or passenger liability arising out of occupancy, operation or use of owned or non-owned aircraft. Coverage also may include liability arising out of the insured’s use, ownership or maintenance of helipads and aviation buildings or premises.

The Statistical Code designation 2-50008 has been assigned to the classification, “Aviation Hull Insurance.” The classification description is as follows: Coverage for loss or damage to aircraft.

The Statistical Code designation 2-50009 has been assigned to the classification, “Property Insurance for Highly Protected Risks (HPR).” The classification description is as follows: Highly protected risks are properties that are subject to a substantially lower than normal probability of loss by virtue of superior construction, special fire protection equipment/procedures, and management commitment to loss prevention.

Notice of Changes

Pursuant to Article 63 of the Insurance Law and section 16.8(f)(3) of Regulation 86, the Department of Financial Services hereby gives notice of the following changes of definition for statistical code designations 2-14177 Directors and Officers Liability Insurance, 2-14183 Fiduciary Liability, 2-14076 Investment Counselors and Asset Managers and Venture Capital Professional and Management Liability, and 2-14194 Product Liability Insurance. The classification descriptions are as follows:

2-14177 Directors and Officers Liability Insurance – Certain Commercial Risks (a) A policy providing liability coverage for directors and officers of a corporation that: (1) has a net worth of at least \$7,500,000 as of the insured’s fiscal year end immediately preceding the policy’s

effective date, as determined by an independent certified public accountant; or (2) has gross assets exceeding \$25,000,000 and a net worth of at least \$1,500,000 as of the insured's fiscal year end immediately preceding the policy's effective date, as determined by an independent certified public accountant; or (3) is a for-profit business entity that generates annual gross revenues exceeding \$25,000,000, and has a net worth of at least \$1,500,000 as of the insured's fiscal year end immediately preceding the policy's effective date, as determined by an independent certified public accountant; or (4) is a for-profit business entity that has gross assets exceeding \$25,000,000 and generates annual gross revenues exceeding \$25,000,000 as of the insured's fiscal year end immediately preceding the policy's effective date, as determined by an independent certified public accountant; or (5) is a not-for-profit organization or public entity with an annual budget exceeding \$25,000,000 for each of its three fiscal years immediately preceding the policy's effective date; or (b) Policies containing primary liability limits of at least \$5,000,000.

2-14183 Fiduciary Liability - Liability coverage for fiduciaries

2-14076 Investment Counselors, Asset Managers and Venture Capital Professional and Management Liability

2-14194 Product Liability Insurance - Product liability coverage for the following classes of risk only: aircraft parts manufacturers, distributors, servicers or installers; automobile parts manufacturers; bioengineered products; farm equipment parts manufacturers; firearms manufacturers; helmet manufacturers; pharmaceutical products manufacturers.

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