To the Members of the Board

RE: New York Workers Compensation
Fine Program for Delinquent Rating Board Criticisms

The Governing Committee has adopted, and the New York State Insurance Department has approved, an amendment to the Criticism Fining Program for all Rating Board criticism letters issued on or after January 1, 2008.

The Criticism Fining Program became effective in 1994 following a recommendation in a New York State Insurance Department examination of the Rating Board which revealed that some carriers were not responding, in a timely manner, to policy criticisms for incorrect underwriting.

Currently, the Program requires that in each case when additional information is needed, or a change to a policy or endorsement submitted to the Rating Board is required, a letter is sent to the carrier and suspended for sixty (60) days. Following the initial sixty (60) day period, a follow-up is sent by a manager requesting compliance with the original letter and is suspended for another sixty (60) days. If no response is received after this one hundred and twenty (120) day period, an Executive Follow-up is sent and suspended for an additional thirty (30) days. The Executive Follow-up letter informs the carrier that if a response is not received by the required date, a fine will be imposed.

An initial fine of $50 is charged for each criticism letter that has not been responded to by the thirtieth (30th) day following the Executive Follow-up. Thereafter, an additional fine of $100 for each subsequent month that a response has not been received is charged to the carrier until the carrier responds to the criticism.

A review of the Program has shown that, in many cases, although a carrier has a total of one hundred fifty (150) days to appropriately respond to Rating Board criticisms, fines are still being incurred by the carrier. To encourage more timely responses and corrections to policy data, the Program has been amended to reduce the first two sixty (60) day suspense periods to thirty (30) days each, resulting in a total of ninety (90) days for compliance with a Rating Board criticism letter prior to the application of the fining mechanism. An amended Page P-2 from the Administrative Rules and Procedures section of the New York Workers Compensation and Employers Liability Insurance Manual is attached for your reference.

Printed manual pages will be distributed as soon as they become available.

Very truly yours,

Monte Almer

President
3. Cancellations or Reinstatements

When a policy is canceled or reinstated, the notice of cancellation or reinstatement shall be filed with the Rating Board. However, if a copy of the policy has previously been filed with the Rating Board and is being canceled flat or has been returned "Not Taken," the regular cancellation notice must be filed with the Rating Board noting on the face of the policy that it has been "Canceled–Not Taken" or "Canceled Flat on Books." This is required even if the effective date of the cancellation is not the same as the effective date of the policy because of statutory requirements. Refer to Section K for statutory provisions in filing "Cancellations," "Reinstatements" or "Notice of Intention Not to Renew."

E. ESTABLISHMENT OF CLASSIFICATIONS AND RATES

The Rating Board is empowered to determine, revise or modify the classification(s) or rate(s) applicable to any individual risk. Every policy insuring a risk for which the classification(s) or rate(s) have been established by the Rating Board shall be written in accordance with such classification(s) and rate(s).

If a carrier, upon inspection or audit, finds any change in operations which may require a change in the classification(s) established for the risk, the carrier shall immediately report the change to the Rating Board. No carrier request to authorize a new classification(s) or rate(s) will be considered by the Rating Board unless the carrier has issued and filed, with the Rating Board, a copy of its policy Information Page written in accordance with the previously established classification(s) and rate(s). The classification(s) and rate(s) for any policy shall be subject to correction or modification or both if the Rating Board determines the classification(s) or rate(s) shown in the policy are not applicable to the risk.

F. INCORRECT UNDERWRITING

1. Policies, Renewal Certificates, or Endorsements

The Rating Board will notify the carrier of any policy, renewal certificate, or endorsement which has not been written in accordance with the rules of this manual. The policy, renewal certificate or endorsement must be canceled and rewritten or corrected by endorsement as may be required by the Rating Board.

Following notification by the Rating Board of the required changes, if a carrier does not, within thirty (30) days, furnish satisfactory evidence to the Rating Board of the correction of any error or omission, a second request will be issued requesting this information. If no response is received within thirty (30) days of the second request, a final request for this information will be sent to an executive officer of the carrier by an executive officer of the Rating Board.

All carriers who have not furnished satisfactory evidence within thirty (30) days of the executive follow-up will be subject to a fine of $50 for each delinquent item. An additional fine of $100 for each item will also be levied each additional month for which a response to a Rating Board criticism has not been received.