To the Members of the Board

Re: New York State Assessment Standard Premium Base

The New York State Insurance Department has released the Fifth Amendment to Regulation No. 119 (11 NYCRR 151-6), which sets forth a revised definition of standard premium to be used for assessment purposes, as required by Part QQ of Chapter 56 of the Laws of 2009. This revised regulation has been issued on an emergency basis to ensure that assessments are calculated and collected in a timely manner for the benefit of the general welfare. A copy of the revised regulation is attached for your reference.

Please especially note that the revised regulation contains a single definition of standard premium without any distinction in definition between retrospectively rated and other policies.

The Rating Board is in the process of amending its manual rules regarding the New York State Assessment to incorporate the single definition of standard premium to be consistent with the revised regulation, and will be filing these changes for approval with the Insurance Department in the near future. Note that, at this time, an effective date for the use of the new definition in determining the policyholder surcharge has not been finalized. The effective date will be provided in a subsequent bulletin once the rule change is approved.

Kindly distribute this information to the appropriate departments within your company.

Very truly yours,

Monte Almer

President
I, James J. Wrynn, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201 and 301 of the Insurance Law, and sections 15(8)(h)(4) and 151(2)(b) of the Workers’ Compensation Law, do hereby promulgate sub-part 151-6 of part 151 of title 11 of the Official Compilation of Codes, Rules and Regulations (No. 119), to take effect upon filing with the Secretary of State, and to read as follows:

(ALL MATTER NEW)

A new sub-part 151-6 entitled Workers’ Compensation Insurance Assessments is added to read as follows:

Section 151-6.0 Preamble

(a) Workers’ Compensation Law sections 15(8)(h)(4), 25-A(3), and 151(2)(b) require the Workers Compensation Board to assess insurers, and the State Insurance Fund for the special disability fund, the fund for reopened cases, and the operations of the Board, respectively. First, the assessments are allocated to insurers, self-insurers, group self-insurers, and SIF based upon the total compensation payments made by all such entities. In the case of an insurer, once the assessment amount is determined, each pays the percentage of the allocation based on the total premiums it wrote during the preceding calendar year.

(b) Prior to January 1, 2010, each insurer paid a percentage of the allocation based on the total direct written premiums it wrote in the preceding calendar year. However, Part QQ of Chapter 56 of the Laws of 2009 (“Part QQ”) amended Workers’ Compensation Law sections 15(8)(h)(4) and 151(2)(b) to change the basis upon which the Board collects the portion of the allocation from each insurer. Thus, effective January 1, 2010, each insurer pays a percentage of the allocation based on the total standard premium it wrote during the preceding calendar year. Part QQ requires the superintendent of insurance (the “superintendent”) to define “standard premium,” for the purposes of the assessments, and to set rules, in consultation with the Board and NYCIRB for collecting the assessment from insureds.

Section 151-6.1 Definitions

As used in this Part:

(a) Board means the New York Workers Compensation Board.
(b) Insurer means an insurer authorized to write workers’ compensation insurance in this state, except for the SIF.

(c) NYCIRB means the New York Workers Compensation Rating Board.

(d) SIF means the State Insurance Fund.

(e) Standard premium means

(i) the premium determined on the basis of the insurer’s approved rates; as modified by:

(a) any experience modification or merit rating factor;

(b) any applicable territory differential premium;

(c) the minimum premium;

(d) any Construction Classification Premium Adjustment Program credits;

(e) any credit from return to work and/or drug and alcohol prevention programs;

(f) any surcharge or credit from a workplace safety program;

(g) any credit from independently-filed insurer specialty programs (for example, alternative dispute resolution, drug-free workplace, managed care or preferred provider organization programs);

(h) any charge for the waiver of subrogation;

(i) any charge for foreign voluntary coverage; and

(j) the additional charge for terrorism, and the charge for natural disasters and catastrophic industrial accidents.

(ii) For purposes of determining standard premium, the insurer’s expense constant, including the expense constant in the minimum premium, the insurer’s premium discount, and premium credits for participation in any deductible program shall be excluded from the premium base.

(iii) The insurer shall use the definition of standard premium set forth in this Part to report standard premium to the Board.

Section 151-6.2 Collection of assessments

Any assessments required by Workers' Compensation Law sections 15(8)(h)(4), 25-A(3) and 151(2)(b) that are collected by an insurer or SIF from policyholders shall be collected through a surcharge based on standard premium in a percentage to be determined by the superintendent in consultation with NYCIRB and the Board.
I, James J. Wrynn, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the Fifth Amendment to Part 151 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 119), promulgated by me on December 17, 2010, pursuant to the authority granted by Sections 201, 301 and 3451 of the Insurance Law, and sections 15(8)(h)(4), 25-A(3), and 151(2)(b) of the Workers’ Compensation Law, to take effect upon filing with the Secretary of State of New York. This regulation was previously promulgated on an emergency basis on December 29, 2009, March 25, 2010, June 24, 2010, and September 20, 2010.

Pursuant to Section 202(6) of the State Administrative Procedure Act, 11 NYCRR 151-6 (Regulation No. 119) is being promulgated as an emergency measure. A statement of the specific reasons for the finding of the need for emergency action is attached.

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James J. Wrynn
Superintendent of Insurance

December 17, 2010