

**NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES  
FIFTH AMENDMENT TO REGULATION NO. 119  
(11 NYCRR PART 151)**

**WORKERS' COMPENSATION INSURANCE**

I, Benjamin M. Lawskey, Superintendent of Financial Services of the State of New York, pursuant to the authority granted by Sections 202, and 302 of the Financial Services Law, Section 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 publication in the State Register, 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) any additional charges for terrorism, 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.



**STATE OF NEW YORK  
DEPARTMENT OF FINANCIAL SERVICES  
ONE STATE STREET  
NEW YORK, NEW YORK 10004**

I, Benjamin M. Lawskey, Superintendent of Financial Services 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 (Insurance Regulation No. 119), promulgated by me on February 21, 2012 pursuant to Sections 202 and 302 of the Financial Services Law, Section 301 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 publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed regulation was published in the State Register on December 28, 2011. No other publication or prior notice is required by statute.

A handwritten signature in black ink, appearing to read 'Benjamin M. Lawskey', written over a horizontal line.

Benjamin M. Lawskey  
Superintendent of Financial Services

February 21, 2012