

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REVIEW STANDARDS FOR
EXCESS WORKERS' COMPENSATION FOR SELF-INSURED EMPLOYERS

LINE OF BUSINESS: Workers Compensation
& Employers Liability
CODE: 16.0000

LINE(S) OF INSURANCE
Excess Workers Compensation CODES
16.0003

IF CHECKLIST IS NOT APPLICABLE, PLEASE EXPLAIN:

REVIEW REQUIREMENTS	REFERENCE	DESCRIPTION OF REVIEW STANDARDS REQUIREMENTS	LOCATION OF STANDARD IN FILING
GENERAL REQUIREMENTS FOR ALL FILINGS		The following web site represents the Department's initiative to streamline the procedures for form, rate and rule filings: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers .	Form/Page/Para Reference
CONSUMER INFORMATION		Employers wishing to act as self-insurers in providing workers' compensation benefits to their employees must comply with the applicable requirements of the New York Workers' Compensation Law and the Workers' Compensation Board (WCB) Regulation in order to obtain the Board's approval.	
COVER LETTER AND EXPLANATORY MEMORANDUM	CL 11 (1998)	The filing should include a cover letter, and an explanatory memorandum clearly explaining the intent of the filing, and highlighting any substantive changes (such as changes in ratemaking methodology or major coverages provided). If new form(s), territories, classification(s), or rule(s) are being filed and there are similar ones currently approved for use by a Rate Service Organization (RSO) or another insurer, or has been the subject of a filing previously not approved in New York, reference should be provided to the Department's file number or SERFF tracking number and effective date of the approval, or copies of the approved items should be included, if applicable. If the filing is currently in use in another state, this should be indicated.	
EXCLUSIONS & LIMITATIONS		The following web site contains additional information on exclusions and prohibited coverages: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers .	
Mold	§2307(b)		
Pollution	§2307(b)	Please refer to Item VIII of the Commercial Liability Insurance Form Filing Compliance Questionnaire, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers .	
Terrorism	§2307(b)	An exclusion for terrorism is not permitted.	
FILING SUBMISSION	§2305 & §2307 CL 19 (1992) Supplement No 1 to	Forms, territories, classifications, rating rules, rates and rating plans are subject to prior approval.	

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REVIEW STANDARDS FOR
EXCESS WORKERS' COMPENSATION FOR SELF-INSURED EMPLOYERS

REVIEW REQUIREMENTS	REFERENCE	DESCRIPTION OF REVIEW STANDARDS REQUIREMENTS	LOCATION OF STANDARD IN FILING
Compliance Questionnaires, Forms and Optional "Speed to Market" Filing Procedures	CL 11 (1998) CL 11 (1998) Supplement No 3 to CL 11 (1998)	Rate filings for Workers' Compensation cannot be made on "Speed-to-Market" basis. Please refer to the following web site for additional information: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
NO FILE OR FILING EXEMPTIONS	Article 63 11NYCRR16 (Reg. 86)	The rate and form filing exemptions of the "Free Trade Zone" do not apply to Workers' Compensation and Employers' Liability.	
PROHIBITED COVERAGES		While the Department does not have an exhaustive list, some examples of prohibited coverages include punitive damages and corporal punishment. Please refer to the following web site for additional information: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
Assault and Battery	§2307(b)	Coverage for Assault and Battery is prohibited except for defense of person or property. Please refer to Item I.A.1.c of the Commercial Liability Insurance Form Filing Compliance Questionnaire, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
Discrimination	CL 6 (1994)	Coverage for discrimination may only be provided on vicarious basis or for disparate impact.	
Intentional Acts	§2307(b)	May only be provided on vicarious basis or for disparate impact. Please refer to Item I.A.1.b of the Commercial Liability Insurance Form Filing Compliance Questionnaire, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
Personal Gain	BL 7023(b)(1), NFPCL 726 (b)(1) and BCL 726 (b)(1)	Payments, other than defense costs, may not be provided if it is adjudicated that a director/officer has personally gained a financial profit or other advantage that the director/officer was not legally entitled.	
Punitive or Exemplary Damages	CL 6 (1994)	Coverage for Punitive or Exemplary Damages is not permitted. Please refer to Item I.A.1.a of the Commercial Liability Insurance Form Filing Compliance Questionnaire, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
Sexual Harassment Coverage	§2307(b)	Coverage should not be provided to any person who allegedly or actually: i) participates in, ii) directs; or iii) knowingly allows any act of sexual misconduct.	

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REVIEW STANDARDS FOR
EXCESS WORKERS' COMPENSATION FOR SELF-INSURED EMPLOYERS

REVIEW REQUIREMENTS	REFERENCE	DESCRIPTION OF REVIEW STANDARDS REQUIREMENTS	LOCATION OF STANDARD IN FILING
SIDE BY SIDE COMPARISON	CL 11 (1998)	If the filing is a revision to existing form(s), territories, classification(s) or rule(s); Except for simple, non-substantive changes, a side-by-side comparison of the form(s) or rule(s) being proposed and those currently in use in New York, with all changes clearly marked and explained in the company's cover letter or memorandum must be included. Revisions to classifications and territories should include a comparison between those currently on file (in New York) and those proposed, including relevant statistical data (experience) and any rate or rate relativity effect. There should be a reference to the Department's previous file number and/or a copy of the approval letter in which the current form(s), territories, classification(s) or rule(s) were approved/acknowledged.	
FORMS: POLICY PROVISIONS	§1113, §2307, §3105, §3106, & §54 of (WCL) 11 NYCRR 86 (Reg. 95) 11NYCRR 71 (Reg. 107) NYCIRB Manual	The Commercial Lines Property Insurance Form Filing Compliance Questionnaire contains detailed information for making a excess workers' compensation filing including required policy provisions, exclusions, prohibited coverages, and standard language, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	Form/Page/Para Reference
APPLICATIONS			
Filing exemption	§2307(b)	Applications which do not become part of the policy are exempt from filing requirements	
Fraud Warning Statement	§403(d) 11NYCRR86.4 (Reg. 95)	All applications must contain the prescribed fraud warning statement, which must be incorporated immediately above the applicant's signature.	
ARBITRATION		Arbitration of disputes between an insured and the insurer may not be required.	
BANKRUPTCY PROVISIONS			
Insolvency or bankruptcy clause	§54(3) of (WCL) & §3420(a)(1)	The language, required by the Workers' Compensation Board ("WCB"), giving the Chair of the WCB subrogation rights in the event of the bankruptcy or insolvency of the self insurer (prescribed language can be obtained from the WCB or the Insurance Department).	
BLANK ENDORSEMENTS		Not permitted since a blank endorsement may change policy provisions without the proper approval by this Department. An exception may be made for a blank form if its usage is apparent based on the title/language of the form itself (such as a change in address form). Forms containing check boxes with a space for language to be added are considered blank endorsements and are subject to these rules. Please refer to Item I.L of the Commercial Liability Insurance Form Filing Compliance Questionnaire and Item I.g of the Commercial Lines Property Form Filing Compliance Questionnaire, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REVIEW STANDARDS FOR
EXCESS WORKERS' COMPENSATION FOR SELF-INSURED EMPLOYERS

REVIEW REQUIREMENTS	REFERENCE	DESCRIPTION OF REVIEW STANDARDS REQUIREMENTS	LOCATION OF STANDARD IN FILING
CANCELLATION & NON-RENEWAL	§3426 CL 14 (1986) CL 11 (1989) Supplement No 1 to CL 11 (1989)	The Cancellation & Nonrenewal provisions apply to all commercial risk policies including policies issued or issued for delivery in New York covering risks with multi-state locations where the insured is principally headquartered in New York or the policy provides that New York Law will govern. Please refer to the Commercial Lines Cancellation and Nonrenewal Form Filing Compliance Questionnaire for detailed cancellation and nonrenewal requirements, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
Notice of Cancellation	Refer to NYCIRB Manual & §3426(b), (c), (h)(2), (g) & (l)	The cancellation provisions must comply with the statutory requirements for the content of the notice (including loss information), proof of notice, special provisions, and time frame for giving notice. Any notice which fails to include a provision required by Section 3426 shall not be an effective notice of cancellation. Notice must be mailed/delivered to the first name insured and to the insured's authorized agent or broker. Please refer to Item I.A of the Commercial Lines Cancellation and Nonrenewal Form Filing Compliance Questionnaire, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
Notice of Non Renewal	Refer to NYCIRB Manual & §3426(e), (g), (h)(2) & (l)	The nonrenewal provisions must comply with the statutory requirements for the content of the notice (including loss information), proof of notice, special provisions, and time frame for giving notice. Any notice which fails to include a provision required by Section 3426 shall not be an effective notice of nonrenewal. Notice must be mailed/delivered to the first name insured and to the insured's authorized agent or broker. Please refer to Item I.B of the Commercial Lines Cancellation and Nonrenewal Form Filing Compliance Questionnaire, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
Required Policy Period	Refer to NYCIRB Manual & §3426(a)(2) & (d)(2)	A required policy period means a period of one year from the date as of which a covered policy is renewed or first issued. A policy issued for less than one year must be in compliance with statutory reasons outlined in §3426(d)(2). Please refer to Item II of the Commercial Lines Cancellation and Nonrenewal Form Filing Compliance Questionnaire, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
Permissible Reasons for Cancellation	Refer to NYCIRB Manual & §3426(b), (c) & (h)	A policy may be cancelled for any valid underwriting reason during the first 60 days a policy is in force. After the first 60 days, reasons for cancellation are limited to statutory references. Please refer to Item I.A. 2 of the Commercial Lines Cancellation and Nonrenewal Form Filing Compliance Questionnaire, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
Permissible Reasons for Non Renewal	Refer to NYCIRB Manual & §3426(e) & (h)	A valid underwriting reason must be specifically listed in notice. Please refer to the Commercial Lines Cancellation and Nonrenewal Form Filing Compliance Questionnaire, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REVIEW STANDARDS FOR
EXCESS WORKERS' COMPENSATION FOR SELF-INSURED EMPLOYERS

REVIEW REQUIREMENTS	REFERENCE	DESCRIPTION OF REVIEW STANDARDS REQUIREMENTS	LOCATION OF STANDARD IN FILING
Conditional Renewal	Refer to NYCIRB Manual & §3426(e)(1)(B)	A conditional renewal notice is required for any change in the policy less favorable to the policyholder. Such notice must contain the specific reason or reasons for conditional renewal and must comply with the statutory requirements for the content of the notice (including loss information), proof of notice, special provisions, and time frame for giving notice. Please refer to Item I.B.2 and I.B.3 of the Commercial Lines Cancellation and Nonrenewal Form Filing Compliance Questionnaire, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
FRAUD WARNING	§403(d) 11NYCRR86.4 (Reg. 95)	All applications must contain the prescribed fraud warning statement, which must be incorporated immediately above the applicant's signature.	
FORMS MISCELLANEOUS			
Numbered Forms	§2307(b)	All policy forms and endorsements filed with the Department must include an identification number. Please refer to Item I.M of the Commercial Liability Insurance Form Filing Compliance Questionnaire, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
Unlicensed Companies	§2307(b)	All policy forms and endorsements filed with the Department may only include the names of insurers licensed in the State of New York. Please refer to Item I.K of the Commercial Liability Insurance Form Filing Compliance Questionnaire, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
LIMITS			
Policy Limits		The policy may show a limit only for Employers Liability, except with respect to public employers. Policies for public employers may limit both Workers Compensation and Employers Liability, provided they are in compliance with Section 50 of New York Workers' Compensation Law. A policyholder disclosure notice is required in all cases where there are limits.	
LOSS SETTLEMENT			
Action Against Company	Refer to §54 of the (WCL) & §3420(b)		
PREMIUM AUDIT	Refer to NYCIRB Manual & 11 NYCRR161.10 (Reg. 129)	Audit to determine the final premium must be conducted within 180 days after expiration of the policy and such audit requirement may only be waived for reasons specified in the regulation.	
VICARIOUS LIABILITY	CL 6 (1994)	The Department permits coverage for claims of vicarious liability regardless of whether the underlying wrong is intentional or not.	
VOIDANCE	§3105 & §3106	May not void a policy unless the misrepresentation is material. No misrepresentation shall be deemed material unless knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make such contract. Please refer to Item I.H of the Commercial Liability Insurance Form Filing Compliance Questionnaire and Item I.c of the Commercial Lines Property Form Filing Compliance Questionnaire, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REVIEW STANDARDS FOR
EXCESS WORKERS' COMPENSATION FOR SELF-INSURED EMPLOYERS

REVIEW REQUIREMENTS	REFERENCE	DESCRIPTION OF REVIEW STANDARDS REQUIREMENTS	LOCATION OF STANDARD IN FILING
RATES & RATING PLANS	§2304 & §2344 11NYCRR161 (Reg. 129) Supplement No 4 to CL 11 (1998)	All rates, rating plans, and rating rules filings must be submitted in accordance with the instructions of Supplement No. 4 to Circular Letter 11 (1998) which outlines the new mandatory filing procedures effective September 16, 2002. These procedures contain the minimum required information that must accompany all rate, rating plan, and rating rule filings. Rate filings must include appropriate supporting information as outlined in the Rate Filing Sequence Checklist. Please note the relevant requirements contained in Section 2304 of the New York Insurance Law. For commercial lines filings subject to flex-rating under Section 2344, please also refer to Regulation 129 (11 NYCRR 161). Please refer to the following web site for additional information: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	Form/Page/Para Reference
ADOPTIONS OF RATE SERVICE ORGANIZATIONS (RSO) FILINGS			
Me Too Filings	§2306 11 NYCRR 161.7 (Reg. 129)	The insurer may discharge its rate filing obligation by giving notice that it uses rates and rate information prepared by a designated rate service organization. Please refer to Regulation 129 for the filing of rates and the relation and role of rates published by a rate service organization and the Department's web site for additional filing information at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
INDIVIDUAL RISK RATING		Not permitted in New York State	
PRICING	§2304 & §2344 11NYCRR161 (Reg. 129) CL 19 (1992) & CL 4 (1996)	The following web site contains the mandatory filing procedures: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
Audit Provisions/premium Audit Rules		Indicate if the filing includes an audit provision and/or a premium audit rule. If so, an audit to determine final premium for policies under which the initial premium is based on an estimate of the insured's exposure base must comply with Section 161.10 of Regulation 129. The provision/rule must clearly demonstrate compliance. In addition, please refer to the NYCIRB manual.	
Minimum Premium Rules		Minimum Premium Rules- the submission should evidence the relationship between the amount charged as a minimum premium and the costs associated with producing the policy or coverage. Return Premium/Minimum Earned Premium Rules - the submission should specify that the policy will be pro-rated or short-rated due to mid-term termination of the policy. Premium may be considered fully earned only for policies insuring special events that are only a few days in length. In addition, please refer to the New York Compensation and Employers Liability Manual.	
Multi Tiering		Not permitted in New York State.	
Renewal Discounts		Not permitted in New York State.	
Service Charges		Late payment fees, reinstatement fees, and premium installment fees are to be filed with the Department.	

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REVIEW STANDARDS FOR
EXCESS WORKERS' COMPENSATION FOR SELF-INSURED EMPLOYERS

REVIEW REQUIREMENTS	REFERENCE	DESCRIPTION OF REVIEW STANDARDS REQUIREMENTS	LOCATION OF STANDARD IN FILING
RATING PLAN REQUIREMENTS	§2344 11NYCRR161.8(Reg. 129)	Rating plans filed by the NYCIRB are subject to prior approval. Any plan other than approved for NYCIRB is subject to the prior approval requirements of the Department.	
Composite Rating		For rating plan rules and standards, please refer to Regulation 129 and item RP-1 and RP-2 of the Rate Filing Sequence Checklist , available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
Expense Reduction Plan		For rating plan rules and standards, please refer to Regulation 129 and item RP-1 and RP-2 of the Rate Filing Sequence Checklist , available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
Experience Rating	RP-1, RP-2, ERP-1, ERP-2, and ERP-3	For rating plan rules and standards, please refer to Regulation 129 and item RP-1, RP-2, ERP-1, ERP-2, and ERP-3 of the Rate Filing Sequence Checklist , available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
Loss Rating		For rating plan rules and standards, please refer to Regulation 129 and item RP-1 and RP-2 of the Rate Filing Sequence Checklist , available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
Retrospective Rating		For rating plan rules and standards, please refer to Regulation 129 and item RP-1 and RP-2 of the Rate Filing Sequence Checklist , available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
Schedule Rating		For rating plan rules and standards, please refer to Regulation 129 and item RP-1 and RP-2 of the Rate Filing Sequence Checklist , available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	
RATE/LOSS COST SUPPORTING INFORMATION			
Actuarial or other Rate Support	11NYCRR161 (Reg. 129) CL 19 (1992) Supplement No 4 to CL 11 (1998)	Rate making and supporting information for rates, rating plans, and rating rules must be organized into exhibits, which follow a sequential numbering system. The Rate Filing Sequence Checklist and the related instructions prescribe the required format used to support rate, rating plan, and rating rule filings, available at: Rate, Form, Territory, Classification and Rule Filing Instructions for Property/Casualty Filers.	