



**Insurance Circular Letter No. 10 (2011)  
November 15, 2011**

**TO: All Insurers Authorized to Write Special Risk Insurance in New York State**

**RE: Implementation of Chapter 490 of the Laws of 2011 and 11 NYCRR 16 (Insurance Regulation 86) with Respect to the Addition of Class 3 to the Free Trade Zone**

**STATUTORY REFERENCE: Financial Services Law §§ 202 and 302; Insurance Law §§ 201, 301, 307, 308, 3110, and Article 63**

The purpose of this Circular Letter is to provide guidance and clarification to all insurers licensed to write special risk insurance in New York State regarding Chapter 490 of the Laws of 2011 and the third amendment to Insurance Regulation 86.

I. Background

Chapter 490, which takes effect on November 15, 2011, amended Insurance Law § 6303 by adding a new (a)(3), which sets forth a new special risk insurance exemption (“class 3”) from rate and form filing or approval requirements until June 30, 2013 for certain types of policies issued to large commercial insureds that employ or retain a special risk manager to assist in the negotiation and purchase of the policies, provided, however, that: (1) the special risk manager is not employed by the insurer issuing the policy or any person in the insurer’s holding company system; (2) the special risk manager is licensed as an insurance producer in New York pursuant to Article 21 of the Insurance Law, unless otherwise exempt; (3) the insurer files with the Superintendent of Financial Services (“Superintendent”) a certificate of insurance evidencing the existence and terms of the policy within one business day of binding the insurance coverage; and (4) policy forms that have not been previously filed with the Superintendent are filed with the Superintendent for informational purposes within three business days after first delivery of a policy using such form, but no later than 60 calendar days after the inception date of such policy.

As a preliminary matter, there have not been any changes to the definitions of a “class 1” or “class 2” risk. If a policy qualifies as a class 1 or 3 risk but the policy also meets the definition of a “class 2” risk, as set forth in § 16.2(j) of Regulation 86, the insurer must code it as a class 2 risk. Similarly, if the policy qualifies as a class 3 risk but also meets the definition of a class 1 risk, the insurer should not write the risk as class 3, but instead code it as class 1. In order for a policy to qualify as a class 3 risk, an insurer must issue the policy to a “large commercial insured,” which Insurance Law § 6303(b)(1) defines as an entity that generates annual commercial risk insurance premium, other than for medical malpractice insurance, in excess of \$25,000 with respect to fire insurance, miscellaneous property insurance, water damage

insurance, burglary and theft insurance, glass insurance, boiler and machinery insurance, elevator insurance, animal insurance, collision insurance, personal injury liability insurance, property damage liability insurance, fidelity and surety insurance, credit insurance, motor vehicle and aircraft physical damage insurance, marine and inland marine insurance, marine protection and indemnity insurance, residual value insurance, prize indemnification insurance, legal services insurance, and insurance substantially similar to one of the foregoing. The policy may cover only such kinds of insurance. In addition, the large commercial insured must:

- (1) have a net worth of at least \$7.5 million as of the insured's fiscal year end immediately preceding the policy's effective date;
- (2) have gross assets exceeding \$10 million and a net worth of at least \$1.5 million as of the insured's fiscal year end immediately preceding the policy's effective date;
- (3) be a for-profit business entity that generates annual gross revenues exceeding \$15 million, and has a net worth of at least \$1.5 million as of the insured's fiscal year end immediately preceding the policy's effective date;
- (4) be a for-profit business entity that has gross assets exceeding \$10 million and generates annual gross revenues exceeding \$15 million as of the insured's fiscal year end immediately preceding the policy's effective date;
- (5) be a not-for-profit organization or public entity with an annual budget exceeding \$20 million dollars for each of its three fiscal years immediately preceding the policy's effective date;
- (6) have 50 employees or, together with its parent, subsidiaries and affiliates, 100 employees, as of the insured's fiscal year end immediately preceding the policy's effective date; or
- (7) be a municipality with a population of 50,000 or more persons.

In addition, as noted, the large commercial insured must employ or retain a special risk manager (as defined in Insurance Law § 6303(b)(2)) to assist in the negotiation and purchase of the policy. An insurer issuing a policy to a large commercial insured must maintain in its underwriting file evidence that the large commercial insured and special risk manager met the minimum requirements set forth in § 6303(b)(1) and (2).

Unlike with class 1 risks, there is no minimum per policy annual premium requirement for class 3 risks. Rather, for an insurer to write a class 3 risk, the insured, among other things, must generate annual commercial risk insurance premium in excess of \$25,000 with respect to the kinds of insurance as specified in § 6303(b)(1) (other than medical malpractice insurance), whether or not the policies generating the premium are written as special risk insurance.

## II. Required Submissions

New Insurance Law § 6303(a)(3) requires an insurer to make two types of filings with the Superintendent to be eligible to be a class 3 risk.

### A. Certificate of Insurance

First, Insurance Law § 6303(a)(3)(B) requires an insurer to file with the Superintendent a certificate of insurance evidencing the existence and terms of every such policy within one business day of binding the insurance coverage. While the Department has not, at this time, prescribed a specific certificate of insurance form, a certificate of insurance form published by the Association for Cooperative Operations Research and Development (“ACORD”), or a form providing substantially the same information, would meet the requirements of § 6303(a)(3)(B).

In addition, § 16.4(b)(2) of Regulation 86 requires an insurer to file a supplemental checklist and certification form that the Department has developed to facilitate compliance with this submission requirement, along with a copy of the certificate previously filed pursuant to Insurance Law § 6303(a)(3)(B), within 30 days from the inception date of the policy.

### B. Policy Forms

Second, Insurance Law § 6303(a)(3)(C) requires an insurer to file with the Superintendent, for informational purposes, within three business days after first delivery of the policy but no later than 60 calendar days after the inception date of the policy, any policy forms that the insurer has not previously filed with the Superintendent. Insurers are reminded that all forms and rates used for special risks written pursuant to Article 63 of the Insurance Law must meet the minimum standards of the Insurance Law and regulations promulgated thereunder. Any policy form that an insurer previously filed with the Superintendent and that the Superintendent disapproved or rejected or that the insurer withdrew will not be considered to have been previously filed with the Superintendent.

### C. Filing Instructions for Class 3 Risk Submissions

Pursuant to § 16.4(b)(1) of Regulation 86, an insurer must file with the Superintendent a certificate of insurance within one business day of binding the coverage by emailing the certificate to [PRP FTZ Class 3 Submissions@dfs.ny.gov](mailto:PRP_FTZ_Class_3_Submissions@dfs.ny.gov). Within 30 days of the inception date of the policy, the insurer must file the supplemental checklist and certification form using the NAIC’s System for Electronic Rate and Form Filing (“SERFF”), along with a copy of the certificate previously filed pursuant to Insurance Law § 6303(a)(3)(B), unless the Superintendent has granted a hardship exemption pursuant to § 16.4(b)(2) of Regulation 86. In such a case, the insurer should make the submissions using the uniform paper transmittal form.

The Department has posted the supplemental checklist and certification form and the instructions for submission via SERFF on the Department’s website under “Guidelines for Rate, Form, Territory, Classification and Rule Filings Submitted via SERFF” at [http://www.dfs.ny.gov/insurance/serff\\_main.htm](http://www.dfs.ny.gov/insurance/serff_main.htm). The Department has posted the paper transmittal form and the

instructions for submissions via hard copy on the Department's website under "Guidelines for Rate, Form, Territory, Classification and Rule Filing Submitted via Paper" at <http://www.dfs.ny.gov/insurance/issec-i.htm>.

Insurers should review Insurance Circular Letter No. 20 (2008) and Supplement No. 1 to Circular Letter No. 20 (2008) regarding contract certainty to ensure that they deliver policies to insureds promptly. As stated in Circular Letter No. 20, "promptly" should generally be interpreted to mean within 30 days, and insurers should carefully document any extensions beyond that period. Insurers should strive for contract certainty within 30 days for at least 90% of the policies but in all cases must deliver the final policy to the insured within 60 days after the inception date of the policy as required by Insurance Law § 6303(a)(3)(C).

Please direct any questions or comments regarding this Circular Letter to Anthony Bonner, Senior Insurance Examiner, at (212) 480-5594 or [anthony.bonner@dfs.ny.gov](mailto:anthony.bonner@dfs.ny.gov).

Very truly yours,

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