

# Important Information about Recoupment of the Regulatory Surcharge

Updated 3/6/2008

## **Background:**

Substitute Senate Bill 5919 (2007) amended RCW 48.02.190, 48.18.040, 48.18.170, and 48.18.180. The term “regulatory surcharge” replaced the term “regulatory operating fee”. **Please note no change was made to the calculation or due date of the surcharge itself.** What follows are some commonly asked questions and answers to provide further guidance.

## **1. How may an insurer treat the regulatory surcharge after July 22, 2007?**

There are two options:

(A) An insurer may recoup the regulatory surcharge by passing the surcharge directly through to its policyholders. Before the amount may be passed through as a policyholder surcharge, a new rate filing or rating manual must be filed with the OIC (if rates/rating manuals must be filed for the line of business). If an insurer chooses to recoup the surcharge, it must be at a uniform rate that is “reasonably calculated” and the surcharge must be separately stated on either a billing statement or a policy statement sent to an insured.

(B) An insurer may continue to build the regulatory surcharge into its rates as one of the insurer’s expected costs. However, using this option, the regulatory surcharge should be subtracted from premiums when filing a premium tax return.

## **2. When may an insurer start recouping the regulatory surcharge directly from its policyholders?**

An insurer may begin to directly recoup the regulatory surcharge anytime after July 22, 2007.

## **3. May an insurer directly recoup the regulatory surcharge for prior years?**

No. Previous rates included the regulatory fee in the rate structure and were collected from past premium payments. A company may begin to directly recoup the regulatory surcharge from its policyholders for the 2007 regulatory surcharge that was due June 15, 2007.

## **4. Does an insurer have to file new rates if it wants to directly recoup the regulatory surcharge from its policyholders?**

Yes. Current rates are deemed to include the regulatory surcharge and therefore the surcharge is already being recouped by current premium payments. If a company wishes to recoup the regulatory surcharge more directly from its policyholders, a new rate filing is required (if rates/rating manuals must be filed for the line of business). This rate filing should show a commensurate reduction in the rate attributable to the regulatory surcharge now being directly recouped by a policyholder surcharge. The policyholder surcharge, however, should not be included in the insurer's manual of rates and rules.

**5. How may an insurer apply the regulatory surcharge directly to policies?**

The policyholder surcharge applies to all lines of insurance and must be at a uniform rate that is "reasonably calculated." It also must be separately stated on either a billing statement or a policy statement sent to an insured.

"Reasonably calculated" means that the policyholder surcharge is based on the portion of the regulatory surcharge that is applicable to that policy. For example, if personal lines auto insurance makes up 40% of a company's premium volume, then 40% of the company's regulatory surcharge should be uniformly charged to personal lines auto policies. "Uniformly charged" means the policyholder surcharge is based on the policy's annual premium and not a fixed amount assessed without considering the policy's annual premium.

**6. If an insurer chooses to recoup the regulatory surcharge directly from its policyholders using option 1(A), may it be recouped from some lines of insurance and not from other lines?**

Yes. An insurer may elect to directly recoup the regulatory surcharge from its policyholders on some lines and not others. If an insurer chooses to allocate the surcharge to some lines and not other lines, "reasonably calculated" means that the policyholder surcharge is based on the portion of the regulatory surcharge applicable that policy. For example, if personal lines auto insurance makes up 40% of a company's premium volume, then 40% of the company's regulatory surcharge should be uniformly charged to personal lines auto policies. "Uniformly charged" means the policyholder surcharge is based on the policy's annual premium and not a fixed amount assessed without considering the policy's annual premium.

**7. If an insurer decides to collect the regulatory surcharge directly from its policyholders, may a policy be canceled for non-payment if the policyholder does not remit the policyholder surcharge with the premium payment?**

No. The regulatory surcharge and resultant policyholder surcharge is not considered part of premium and an insurer may not cancel a policy solely because a policyholder fails to remit the surcharge to the insurer.

**8. What happens if an insurer over-recoups or under-recoups the regulatory surcharge directly from its policyholders?**

If an insurer over-recoups or under-recoups the amount of the regulatory surcharge using a direct policyholder surcharge, the insurer must use a “true up” process to reconcile any difference. If the policyholder surcharge results in over-recoupment of regulatory surcharge, the insurer must reduce the following year’s policyholder surcharge by the amount over-recouped. Similarly, if the direct policyholder surcharge amount under-recoups the amount of the regulatory surcharge, the insurer may increase the following year’s surcharge by the amount under-recouped.

**9. Does an insurer have to file new rates (if rates/rating manuals must be filed for a line of business) if it does not plan to recoup the regulatory surcharge by using a direct policyholder surcharge?**

No. If an insurer continues to include the regulatory surcharge in its rate structure, a new rate filing is not necessary. See section 1(B) above for further guidance.

**10. If an insurer elects to recoup the regulatory surcharge directly from its policyholders, does an insurer need to file the policyholder surcharge amount for approval by the OIC?**

No. An insurer should not file the policyholder surcharge amount for review or approval. Any insurer’s filing of its policyholder surcharge will be returned to the insurer without any action by OIC.

**11. How will an insurer know it is in compliance with the new law?**

The OIC will monitor compliance with the new law by:

- Reviewing filed premium tax statements;
- Reviewing rate filings; and
- Market conduct oversight activities.

**12. Questions**

For questions on rate filings, please contact Lee Barclay at [LeeB@oic.wa.gov](mailto:LeeB@oic.wa.gov)  
For questions on tax form filings, please contact Kriscinda Hansen at [taxes@oic.wa.gov](mailto:taxes@oic.wa.gov)