

Classification and Rating Committee

Revised Meeting Agenda

Date	Time	Location	Staff Contact
April 14, 2020	9:45 AM	Webinar Teleconference	Brenda Keys
1221 Broadway, Suite 900 • Oakland, CA 94612 • 415.777.0777 • Fax 415.778.7007 • www.wcirb.com • wcirb@wcirb.com			

Released: April 3, 2020

To Members of the Classification and Rating Committee, WCIRB Members and All Interested Parties:

Due to the COVID-19 crisis and Governor Gavin Newsom's stay-at-home order, this meeting is being held via webinar teleconference. **This meeting is Open to the Public.**

Please register at <https://attendee.gotowebinar.com/register/9147647977205178379>

I. Approval of Minutes

Meeting held February 11, 2020

II. Unfinished Business

III. New Business

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i. Claims Reporting and Experience Rating	
ii. Impact on Basis of Payroll	

IV. Matters Arising at Time of Meeting

V. Next Meeting Date: June 2, 2020

VI. Adjournment

Antitrust Notice

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Item III-A 2021 Changes to Expected Loss Ranges

The *California Workers' Compensation Experience Rating Plan—1995* (ERP) includes an expected loss primary threshold that varies by size of the employer. Effective January 1, 2019, the Commissioner approved amendments to the ERP to exclude the first \$250 of each claim from the experience modification computation and simplify the experience rating formula to:

$$\frac{\text{Actual Primary Losses} + \text{Expected Excess Losses}}{\text{Total Expected Losses}}$$

WCIRB staff is proposing an update to the expected loss ranges corresponding to each primary threshold to reflect the most current experience. The methodology used to update these expected loss intervals as well as a recommended methodology for applying credibility adjustments as appropriate to D-ratios by classification and threshold was reviewed by the Actuarial Committee at the April 2, 2020 meeting.

Staff began this current update of the expected loss ranges for primary thresholds by validating that previous research findings still hold. Staff identified maximum efficiency¹ indicated primary thresholds and smoothed these results across cohorts. This mitigates the impact of both atypical years and outlier cohort results in the determination of the final expected loss ranges. The smoothed values are shown in Exhibit 1. The current expected loss ranges for the current primary thresholds as well as the indicated ranges based on the Policy Year 2014-2017 projection years are shown in Exhibit 2. The indicated efficiencies of the Plan were improved with the updated expected loss intervals. The final smoothed primary threshold values have tended to move upward over time. The smoothed threshold values are shown in Exhibit 3.

Exhibit 4 shows the loss ratios in the projection year by quintile both before and after application of the experience modification with the updated primary thresholds.² This exhibit shows the distributions by quintile for the 100,000 largest risks each year for each projection year from 2013 through 2017.

Exhibit 5 shows a histogram of the impact of staff's proposed 2021 changes on actual 2019 and 2020 experience modifications. As shown, the impacts are very modest with the mean impact only 0.32% and 94.5% of risks having a change of no more than five percentage points due to the proposed changes.

Staff recommends adopting these updated primary threshold values beginning in 2021 as shown in Exhibit 6. In addition, given the indicated drift in the indicated primary thresholds, staff proposes to update these values annually in order to moderate the impact of the year-to-year changes.

¹ Efficiency, or mean squared error, is the criteria used by the Actuarial Committee to compare the relative accuracy of various options for methodologies.

² The impacts shown also the updated D-ratio credibility methodology being recommended by staff.

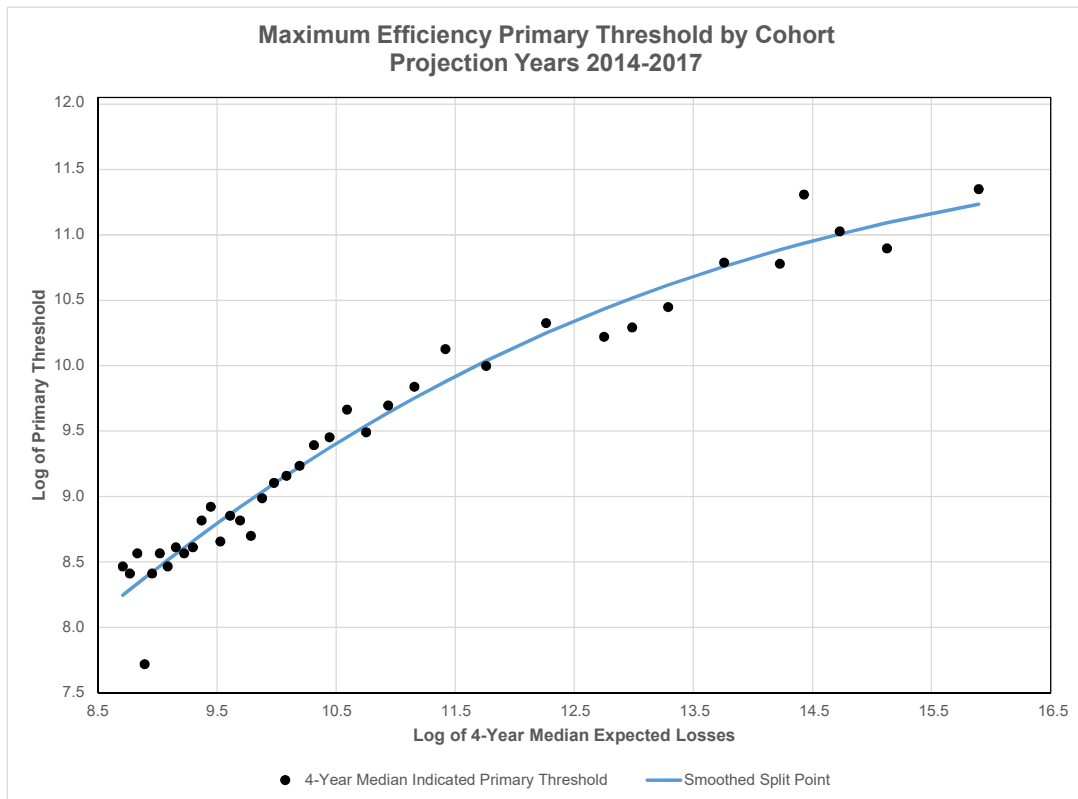
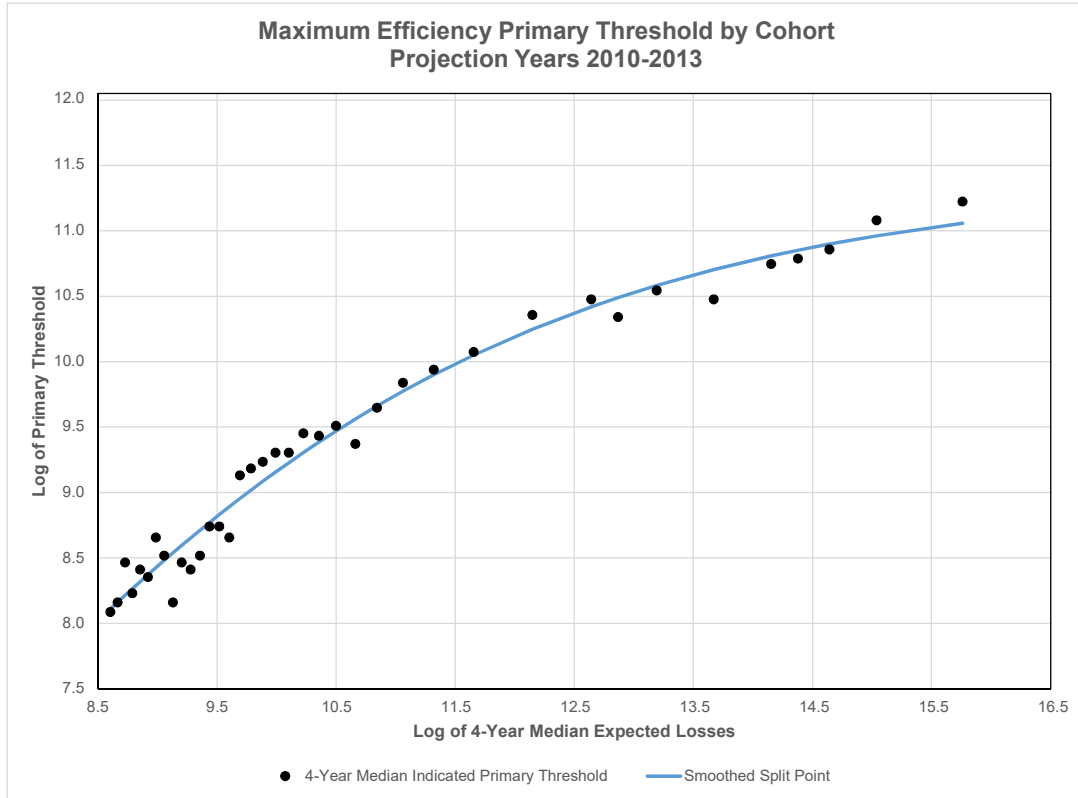
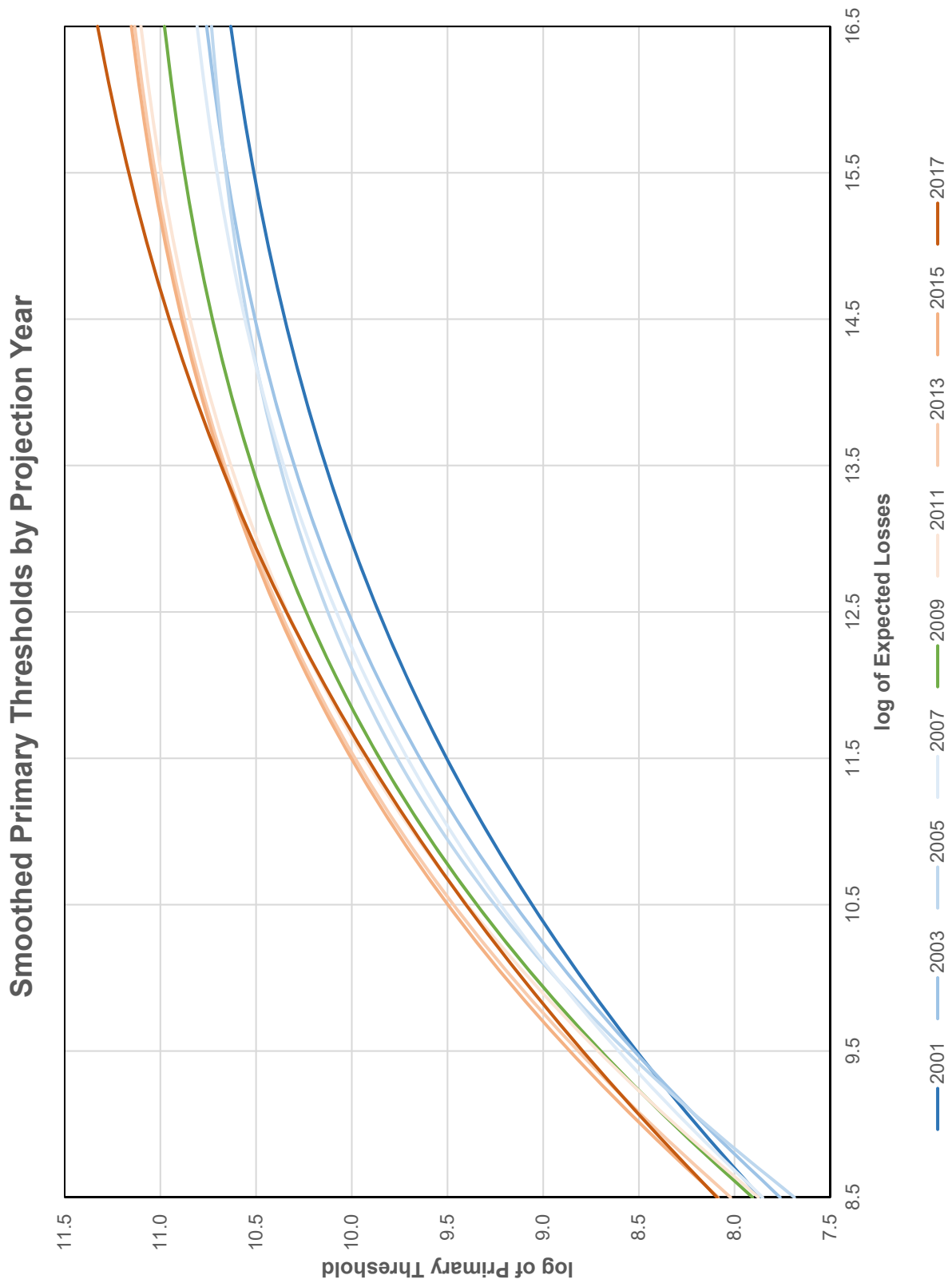
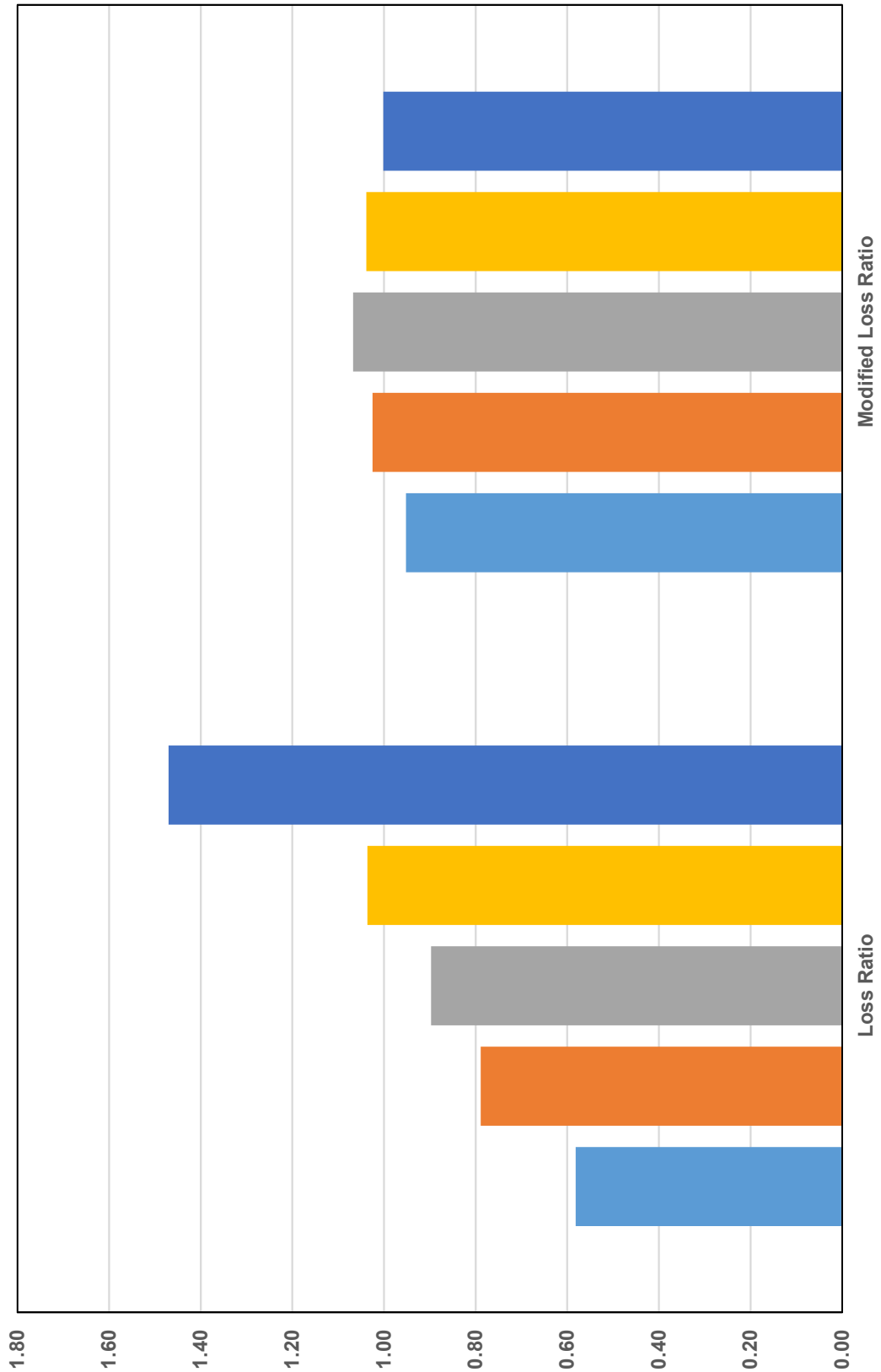


Table of Current and Updated Expected Loss Ranges by Primary Threshold

Primary Threshold	Current Expected Loss Range		Projection Year 2014-2017 Expected Loss Range		Primary Threshold	Current Expected Loss Range		Projection Year 2014-2017 Expected Loss Range	
4,500	Below	- 9,877	Below	- 8,245	30,000	213,369	- 242,111	235,883	- 257,061
5,000	9,878	- 10,866	8,246	- 9,523	31,000	242,112	- 275,323	257,062	- 279,798
5,500	10,867	- 11,887	9,524	- 10,882	32,000	275,324	- 313,696	279,799	- 304,201
6,000	11,888	- 12,945	10,883	- 12,324	33,000	313,697	- 357,964	304,202	- 330,387
6,500	12,946	- 14,041	12,325	- 13,850	34,000	357,965	- 408,876	330,388	- 358,481
7,000	14,042	- 15,179	13,851	- 15,462	35,000	408,877	- 467,147	358,482	- 388,616
7,500	15,180	- 16,362	15,463	- 17,164	36,000	467,148	- 533,407	388,617	- 420,939
8,000	16,363	- 17,591	17,165	- 18,958	37,000	533,408	- 608,149	420,940	- 455,604
8,500	17,592	- 18,872	18,959	- 20,845	38,000	608,150	- 691,685	455,605	- 492,779
9,000	18,873	- 20,206	20,846	- 22,830	39,000	691,686	- 784,128	492,780	- 532,645
9,500	20,207	- 21,597	22,831	- 24,914	40,000	784,129	- 885,390	532,646	- 575,397
10,000	21,598	- 23,048	24,915	- 27,101	41,000	885,391	- 995,208	575,398	- 621,244
10,500	23,049	- 24,563	27,102	- 29,394	42,000	995,209	- 1,113,185	621,245	- 670,413
11,000	24,564	- 26,147	29,395	- 31,796	43,000	1,113,186	- 1,238,829	670,414	- 723,149
11,500	26,148	- 27,802	31,797	- 34,311	44,000	1,238,830	- 1,371,598	723,150	- 779,717
12,000	27,803	- 29,533	34,312	- 36,941	45,000	1,371,599	- 1,510,932	779,718	- 840,402
12,500	29,534	- 31,346	36,942	- 39,691	46,000	1,510,933	- 1,656,279	840,403	- 905,513
13,000	31,347	- 33,245	39,692	- 42,565	47,000	1,656,280	- 1,807,110	905,514	- 975,386
13,500	33,246	- 35,235	42,566	- 45,565	48,000	1,807,111	- 1,962,931	975,387	- 1,050,384
14,000	35,236	- 37,323	45,566	- 48,697	49,000	1,962,932	- 2,123,285	1,050,385	- 1,130,898
14,500	37,324	- 39,513	48,698	- 51,964	50,000	2,123,286	- 2,287,757	1,130,899	- 1,217,357
15,000	39,514	- 41,814	51,965	- 55,371	51,000	2,287,758	- 2,455,968	1,217,358	- 1,310,222
15,500	41,815	- 44,232	55,372	- 58,922	52,000	2,455,969	- 2,627,577	1,310,223	- 1,409,998
16,000	44,233	- 46,775	58,923	- 62,622	53,000	2,627,578	- 2,802,277	1,409,999	- 1,517,230
16,500	46,776	- 49,451	62,623	- 66,475	54,000	2,802,278	- 2,979,788	1,517,231	- 1,632,514
17,000	49,452	- 52,269	66,476	- 70,487	55,000	2,979,789	- 3,159,860	1,632,515	- 1,756,497
17,500	52,270	- 55,239	70,488	- 74,663	56,000	3,159,861	- 3,342,268	1,756,498	- 1,889,885
18,000	55,240	- 58,371	74,664	- 79,008	57,000	3,342,269	- 3,526,806	1,889,886	- 2,033,450
18,500	58,372	- 61,677	79,009	- 83,527	58,000	3,526,807	- 3,713,290	2,033,451	- 2,188,030
19,000	61,678	- 65,169	83,528	- 88,227	59,000	3,713,291	- 3,901,550	2,188,031	- 2,354,545
19,500	65,170	- 68,860	88,228	- 93,112	60,000	3,901,551	- 4,091,435	2,354,546	- 2,533,999
20,000	68,861	- 72,765	93,113	- 98,190	61,000	4,091,436	- 4,282,803	2,534,000	- 2,727,491
20,500	72,766	- 76,900	98,191	- 103,466	62,000	4,282,804	- 4,475,529	2,727,492	- 2,936,227
21,000	76,901	- 81,281	103,467	- 108,947	63,000	4,475,530	- 4,669,495	2,936,228	- 3,161,527
21,500	81,282	- 85,928	108,948	- 114,640	64,000	4,669,496	- 4,864,594	3,161,528	- 3,404,843
22,000	85,929	- 90,860	114,641	- 120,552	65,000	4,864,595	- 5,060,728	3,404,844	- 3,667,770
22,500	90,861	- 96,100	120,553	- 126,689	66,000	5,060,729	- 5,257,806	3,667,771	- 3,952,060
23,000	96,101	- 101,673	126,690	- 133,060	67,000	5,257,807	- 5,455,746	3,952,061	- 4,259,649
23,500	101,674	- 107,603	133,061	- 139,672	68,000	5,455,747	- 5,654,469	4,259,650	- 4,592,665
24,000	107,604	- 113,920	139,673	- 146,533	69,000	5,654,470	- 5,853,904	4,592,666	- 4,953,464
24,500	113,921	- 120,655	146,534	- 153,651	70,000	5,853,905	- 6,053,986	4,953,465	- 5,344,644
25,000	120,656	- 131,616	153,652	- 164,830	71,000	6,053,987	- 6,254,653	5,344,645	- 5,769,087
26,000	131,617	- 148,038	164,831	- 180,719	72,000	6,254,654	- 6,455,847	5,769,088	- 6,229,982
27,000	148,039	- 166,850	180,720	- 197,802	73,000	6,455,848	- 6,657,517	6,229,983	- 6,730,869
28,000	166,851	- 188,466	197,803	- 216,160	74,000	6,657,518	- 6,859,611	6,730,870	- 7,275,685
29,000	188,467	- 213,368	216,161	- 235,882	75,000	6,859,612	- & Over	7,275,686	- & Over



**2013 - 2017 Projection Year Loss Ratios by Modification Quintile
All Industries - All Employer Sizes: 500,000 Risks - 34% Claim-Free**



Changes in Issued 2019 & 2020 Modifications due to All Proposed Changes

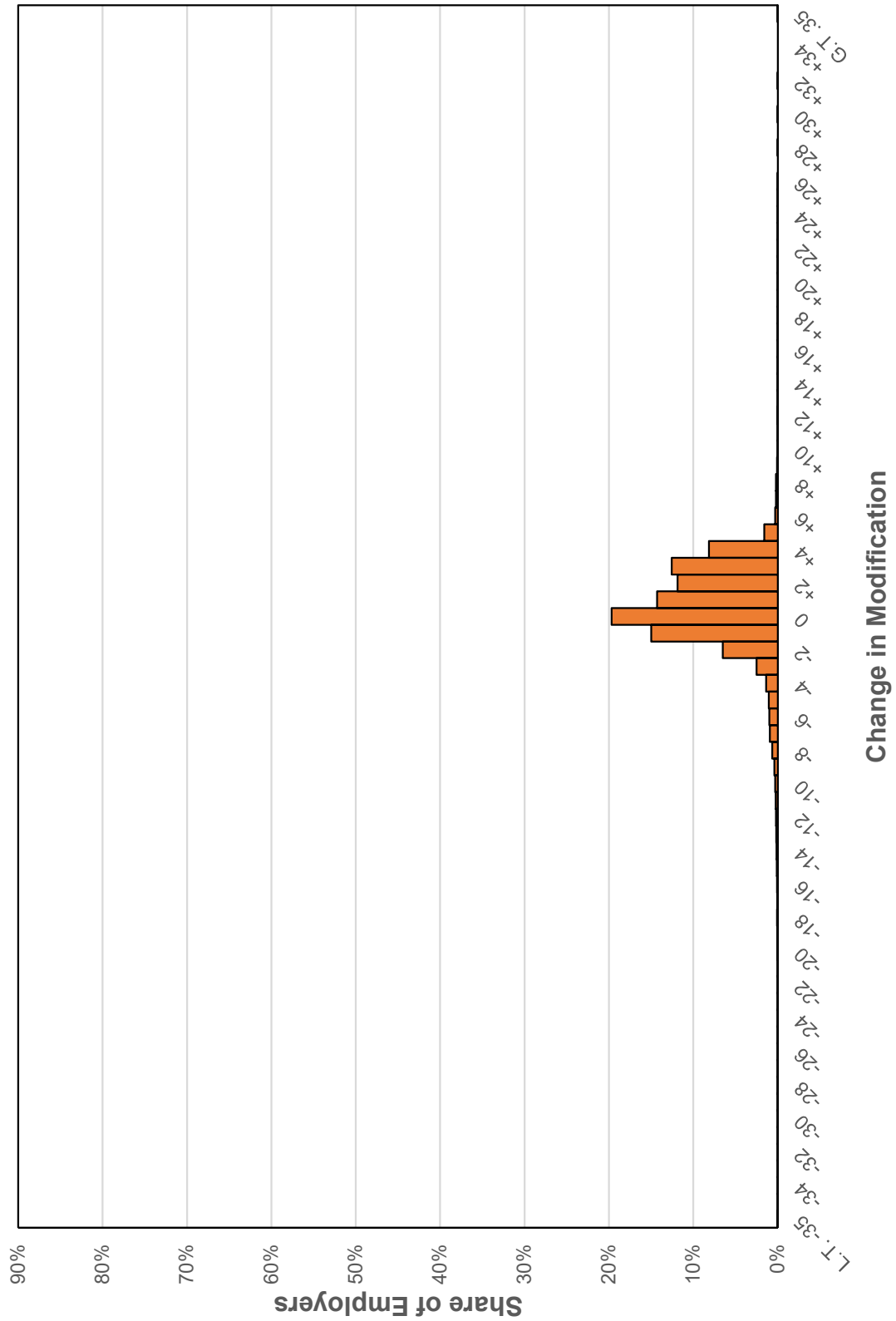


Table of Proposed Expected Loss Ranges by Primary Threshold

Primary Threshold	Proposed Expected Loss Range		Primary Threshold	Proposed Expected Loss Range	
4,500	Below	8,245	30,000	235,883	257,061
5,000	8,246	9,523	31,000	257,062	279,798
5,500	9,524	10,882	32,000	279,799	304,201
6,000	10,883	12,324	33,000	304,202	330,387
6,500	12,325	13,850	34,000	330,388	358,481
7,000	13,851	15,462	35,000	358,482	388,616
7,500	15,463	17,164	36,000	388,617	420,939
8,000	17,165	18,958	37,000	420,940	455,604
8,500	18,959	20,845	38,000	455,605	492,779
9,000	20,846	22,830	39,000	492,780	532,645
9,500	22,831	24,914	40,000	532,646	575,397
10,000	24,915	27,101	41,000	575,398	621,244
10,500	27,102	29,394	42,000	621,245	670,413
11,000	29,395	31,796	43,000	670,414	723,149
11,500	31,797	34,311	44,000	723,150	779,717
12,000	34,312	36,941	45,000	779,718	840,402
12,500	36,942	39,691	46,000	840,403	905,513
13,000	39,692	42,565	47,000	905,514	975,386
13,500	42,566	45,565	48,000	975,387	1,050,384
14,000	45,566	48,697	49,000	1,050,385	1,130,898
14,500	48,698	51,964	50,000	1,130,899	1,217,357
15,000	51,965	55,371	51,000	1,217,358	1,310,222
15,500	55,372	58,922	52,000	1,310,223	1,409,998
16,000	58,923	62,622	53,000	1,409,999	1,517,230
16,500	62,623	66,475	54,000	1,517,231	1,632,514
17,000	66,476	70,487	55,000	1,632,515	1,756,497
17,500	70,488	74,663	56,000	1,756,498	1,889,885
18,000	74,664	79,008	57,000	1,889,886	2,033,450
18,500	79,009	83,527	58,000	2,033,451	2,188,030
19,000	83,528	88,227	59,000	2,188,031	2,354,545
19,500	88,228	93,112	60,000	2,354,546	2,533,999
20,000	93,113	98,190	61,000	2,534,000	2,727,491
20,500	98,191	103,466	62,000	2,727,492	2,936,227
21,000	103,467	108,947	63,000	2,936,228	3,161,527
21,500	108,948	114,640	64,000	3,161,528	3,404,843
22,000	114,641	120,552	65,000	3,404,844	3,667,770
22,500	120,553	126,689	66,000	3,667,771	3,952,060
23,000	126,690	133,060	67,000	3,952,061	4,259,649
23,500	133,061	139,672	68,000	4,259,650	4,592,665
24,000	139,673	146,533	69,000	4,592,666	4,953,464
24,500	146,534	153,651	70,000	4,953,465	5,344,644
25,000	153,652	164,830	71,000	5,344,645	5,769,087
26,000	164,831	180,719	72,000	5,769,088	6,229,982
27,000	180,720	197,802	73,000	6,229,983	6,730,869
28,000	197,803	216,160	74,000	6,730,870	7,275,685
29,000	216,161	235,882	75,000	7,275,686	& Over

Item III-B

Hard Copy Policy Reporting Requirements

The *California Workers' Compensation Uniform Statistical Reporting Plan—1995* (USRP) currently requires insurers to submit workers' compensation policy information to the WCIRB via hard copy or electronically. The continued acceptance of hard copy policy documents from a small group of insurers, however, exposes the WCIRB to continuing costs in maintaining a data entry system and retaining staff to process the hard copy policy documents, and it creates risks for the WCIRB in assuming responsibility for the accuracy of the transactions. As a result, at the December 11, 2019 meeting, the Governing Committee directed that the WCIRB stop accepting hard copy policy documents effective July 1, 2020.

WCIRB staff, therefore, is recommending amendments to the USRP to (1) remove the option of reporting policy information via hard copy, (2) reduce the time period for submission of policy information from sixty to thirty days as reporting electronically is more efficient and this will better align the WCIRB with the submission requirements of other data collection organizations, (3) remove outdated requirements for continuing form policies, and (4) remove language that is duplicative of the Workers Compensation Insurance Organizations' Workers Compensation Policy Reporting Specifications (WCPOLS) since these reporting requirements are incorporated by reference into the USRP and, therefore, insurers are already required to comply with them. These changes are proposed for inclusion in the January 1, 2021 Regulatory Filing.

Recommendation

Amend Part 1, *General Provisions*, Section I, *Introduction*, Rule 1, *Purpose*, to reflect that policy information must be reported electronically to the WCIRB.

PROPOSED

Part 1 – General Provisions

Section I – Introduction

1. Purpose

This Plan contains the necessary rules and instructions for the ~~documents~~filing~~information and reporting of~~reporting of policy documents in connection therewith on the direct business written by insurers for California workers' compensation insurance and employers' liability insurance incidental thereto and written in connection therewith.

This Plan requires that separate unit statistical reports be filed by insurers for every workers' compensation insurance policy written. The loss, exposure and premium data reported for each policy is used to develop experience in standard classification detail.

Pure premium rates and experience modifications are based upon the ~~data~~data information reported in accordance with this Plan. It is therefore essential that the greatest possible care be taken to furnish complete and accurate information and that the information be filed at the time and in the manner specified in this Plan.

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Recommendation

Amend Part 1, Section III, *Submission of Information*, Rule 1, *Reporting Information*, to remove requirements relating to hard copy submission of policy documents.

PROPOSED

Section III – Submission of Information

1. Reporting Information

Information or ~~documents~~ required to be ~~submitted~~reported pursuant to the provisions of this Plan shall be filed either electronically or on hard copy with the WCIRB, as the designated statistical agent for the Insurance Commissioner of the state of California. ~~The address of the WCIRB is:~~

~~Workers' Compensation Insurance Rating Bureau of California
1221 Broadway, Suite 900
Oakland, CA 94612~~

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Recommendation

Amend Part 2, *Policy Reporting Requirements*, Section I, *General Instructions*, to (1) remove requirements relating to hard copy submission of policy documents; (2) reflect current electronic policy reporting requirements; (3) change policy information reporting timeframes from 60 to 30 days; and (4) incorporate changes for clarity and consistency.

PROPOSED

Part 2 – Policy Reporting Requirements

Section I – General Instructions

The policy document information reporting provisions contained in this Part are necessary to facilitate experience rating, the accurate and timely reporting of unit statistical report data, and the use of approved policy forms.

Insurers shall provide the WCIRB with all Policy Documents (i.e., policies, endorsements, cancellations and reinstatements) written to provide California workers' compensation insurance coverage. Policy Documents shall be filed with the WCIRB via either: (1) hard copy, or (2) electronic submission report policy information for every workers' compensation insurance policy extending insurance coverage under the workers' compensation laws of California, including California coverage by endorsement on a policy primarily providing coverage in another state, by electronic submission to the WCIRB in accordance with this Plan and the reporting requirements for California described in the Workers Compensation Insurance Organizations' (WCIO) Workers Compensation Policy Reporting Specifications (WCPOLS) except as provided in Part 2, Section III, *Additional Electronic Reporting Requirements*. Insurers must shall receive WCIRB approval prior to submitting data reporting information electronically. Separate approval is required for electronic submission of each type of Policy Document.

1. Policies

a. New and Renewal Policies

- (1) The hard copy information page (and any extensions thereto) of every workers' compensation insurance policy or electronic records of the data included therein New and renewal policy transactions shall be submitted reported to the WCIRB no later than sixty (60) thirty (30) days subsequent to the inception date of the policy represented.
- (2) Insuring two or more legal entities on a single policy is subject to the provisions and limitations set forth in Part 2, Section III, *Additional Interests*, of the *Miscellaneous Regulations for the Recording and Reporting of Data – 1995*, provided, however, if a policy providing coverage for the workers leased by a labor contractor to a client is in the name of the labor contractor, the phrase "Leased Coverage For" or the acronym "LCF" followed by the client's name may appear in Item 1 of the policy.
- (3) If submitting the policy in hard copy to the WCIRB, it shall include the following:

- ~~(a) Name of the insurer providing coverage (not insurer group name).~~
 - ~~(b) Policy number.~~
 - ~~1. The policy number shall be a unique number applying to the one policy and shall not be used on any other policy with an identical inception date.~~
 - ~~(c) Complete legal name of all policyholders. See Section III, *Additional Electronic Reporting Requirements*, Rule 1b, Subrule (1), *Name of Insured*, for the requirements for reporting the name of the insured.~~
 - ~~(d) Federal Employer Identification Number (FEIN). Report the policyholder's nine (9) digit FEIN. If the policyholder does not have a FEIN, report "000000000".~~
 - ~~(e) Type of entity insured. Indicate the legal nature of the insured entity, e.g., individual, partnership, corporation, association, limited partnership, joint venture, common ownership, joint employers, Limited Liability Company (LLC), trust or estate, Limited Liability Partnership (LLP), governmental entity, other. See Part 2, Section III, Rule 1a, Subrule (1), *Legal Nature of Insured Code*, for the requirements for reporting the type of entity insured.~~
 - ~~(f) Complete address of the insured. The address should include the postal zip code for the named insured's mailing address.~~
 - ~~(g) Dates of coverage.~~
 - ~~(h) Applicable insurer classification(s).~~
 - ~~(i) Applicable experience modification(s). If the WCIRB has not published an experience modification, no modification should be reported. (Note: Tentative experience modifications may be used; however, they must be clearly identified as such.)~~
 - ~~(j) Office from which the policy emanated.~~
 - ~~(k) Previous policy number. This information should be provided if the same company or affiliated company of an insurer group renews the business. If there is no previous policy number, report the word "new" in the space provided for the previous policy number.~~
 - ~~(l) Form number(s) for the policy conditions and every endorsement and ancillary agreement attached to the policy. See Part 2, Section III, Rule 1e, *Endorsement Identification Record Information (Record 07)*, Subrule (1)(d), for the requirements for reporting form numbers for ancillary agreements.~~
- ~~(4) If submitting a continuing form policy in hard copy, it must be clearly identified as such.~~

b. Annual Rating/Rerate Endorsements

~~Annual rating endorsements or the electronic records of the data included therein rerate endorsement transactions shall be submitted reported for any original policy written as a continuing form policy or fixed-term policy written in excess of one year and sixteen (16) days no later than thirty (30) days subsequent to the issuance date.~~

- ~~(1) An annual rating endorsement shall be submitted to take effect on the inception date of the second period of coverage and annually thereafter for each continuing form policy or fixed-term policy written in excess of one year and sixteen (16) days.~~
- ~~(2) An annual rating endorsement shall be submitted to the WCIRB no later than sixty (60) days after its inception.~~
- ~~(3) Annual rating endorsements shall be used only for the purpose of showing the proper experience modification. Annual rating endorsements cannot be used to make any other changes to the policy, such as, but not limited to, modifying the name of the policyholder or adding or eliminating locations or classifications.~~

- ~~(4) Each annual rating endorsement submitted to the WCIRB in hard copy shall be clearly identified as an annual rating endorsement.~~
- ~~(5) If an annual rating endorsement is submitted to the WCIRB in hard copy, it shall also indicate:
 - ~~(a) Name of the insurer providing coverage (not insurer group name).~~
 - ~~(b) Policy number. The policy number should include all prefixes and suffixes of the policy that the annual rating endorsement is extending.~~
 - ~~(c) Dates of coverage.~~
 - ~~(d) Applicable insurer classification(s).~~
 - ~~(e) Applicable experience modification(s). Report the effective date of the experience modification only if it is not effective as of the inception date of the annual rating endorsement. (Note: Tentative experience modifications may be used; however, they must be clearly identified as such.)~~~~

c. Renewal Certificates/Renewal Agreements

Renewal certificate/renewal agreement transactions shall be reported to the WCIRB no later than thirty (30) days subsequent to the inception date of the renewal certificate or renewal agreement.

An insurer renewing a policy may ~~write and submit~~report the renewal to the WCIRB as either a renewal policy (see Rule 1a, above) or as a renewal certificate, which is also referred to as a renewal agreement.

- ~~(1) Each renewal certificate or renewal agreement or the electronic records of the data included therein shall be submitted to the WCIRB no later than sixty (60) days after its inception.~~
- ~~(2) Renewal certificates and renewal agreements shall be used only for the purpose of renewing the policy and showing the proper experience modification for the renewal period. Renewal certificates and renewal agreements cannot be used to make any other changes to the policy, such as, but not limited to, modifying the name of the policyholder, or adding or eliminating locations or classifications.~~
- ~~(3) Each renewal certificate and renewal agreement submitted to the WCIRB in hard copy shall be clearly identified as a renewal certificate or renewal agreement.~~
- ~~(4) If a renewal certificate or renewal agreement is submitted to the WCIRB in hard copy, it shall also indicate:
 - ~~(a) Name of the insurer providing coverage (not insurer group name).~~
 - ~~(b) Policy number. The policy number should include all prefixes and suffixes of the policy that the renewal certificate or renewal agreement is renewing.~~
 - ~~(c) Dates of coverage.~~
 - ~~(d) Applicable insurer classification(s).~~
 - ~~(e) Applicable experience modification(s). Report the effective date of the experience modification only if it is not effective as of the inception date of the renewal certificate or renewal agreement. (Note: Tentative experience modifications may be used; however, they must be clearly identified as such.)~~~~

d. Rewrites

Rewrite transactions shall be reported to the WCIRB no later than thirty (30) days subsequent to the issuance date.

Rewrites may be issued to ~~replace~~make changes to any previously issued new and renewal policies, annual ~~rating~~rate endorsements and renewal certificates/renewal agreements (e.g., changes to the insurer name, policy number or policy effective dates). Rewrites will replace the original transaction in its entirety.

- ~~(1) Each rewrite or the electronic records of the information included therein shall be submitted to the WCIRB no later than sixty (60) days after issuance.~~
- ~~(2) If a rewrite is submitted to the WCIRB in hard copy, it shall be clearly identified as a rewrite and shall contain:~~
 - ~~(a) All of the information required for the Policy Document that it is replacing (see above); and~~
 - ~~(b) The policy number of the original policy, annual rating endorsement, or renewal certificate/renewal agreement, if different from the rewrite policy number.~~

~~e. Binders~~

~~Binders shall be subject to the filing requirements applicable to new and renewal policies, except that a binder superseded by a policy effective as of the inception date of the bound period and issued within sixty (60) days of such inception date need not be submitted to the WCIRB.~~

2. Endorsements and Ancillary Agreements

- ~~a. Except as otherwise provided, a copy of (1) every endorsement~~Transactions for every endorsement affecting California coverage or amending the policy information referenced in Rule 1 above shall be reported to the WCIRB no later than thirty (30) days subsequent to the issuance date, except as otherwise stated.
- ~~b. and (2) every ancillary agreement~~Transactions for every ancillary agreement, as the term is defined in Title 10, California Code of Regulations, Section 2250(f), or the electronic records of the information included therein shall be reported to the WCIRB no later than sixty (60) thirty (30) days after subsequent to the issuance date. In no event shall endorsements or ancillary agreements be reported prior to submitting the electronic or hard copy information page of the policy to which the endorsement or ancillary agreement is attached.
- ~~bc. If submitting hard copy policy information, it is not necessary to submit a copy of each endorsement attached to a policy, provided:~~Policy transactions shall be reported to the WCIRB prior to the reporting of transactions for endorsements or ancillary agreements.
 - ~~(1) The body of the endorsement does not require the insertion of any variable text;~~
 - ~~(2) The exact endorsement form was previously filed with the WCIRB and approved by the Insurance Commissioner; and~~
 - ~~(3) The form number of the endorsement is clearly listed in item 3.D. of the hard copy policy information page filed with the WCIRB.~~
- ~~c. If submitting hard copy policy information, it is not necessary to submit a copy of each ancillary agreement attached to a policy, provided:~~
 - ~~(1) The exact ancillary agreement form was previously filed with the WCIRB and approved by the Insurance Commissioner; and~~
 - ~~(2) The form number of the ancillary agreement is clearly listed in item 3.D. of the hard copy policy information page filed with the WCIRB.~~
- ~~d. If submitting in hard copy, each endorsement or ancillary agreement attached to a policy subsequent to policy issuance shall be submitted to the WCIRB in accordance with Rule 2a, above, and shall:~~

- ~~(1) Identify the name of the insurer (not insurer group) that issued the endorsement or ancillary agreement;~~
- ~~(2) Identify the policy number of the policy to which the endorsement or ancillary agreement is attached; and~~
- ~~(3) Identify the effective date of the endorsement or ancillary agreement.~~

3. Cancellations or Reinstatements

For cancelled policies, a cancellation transaction shall be reported to the WCIRB no later than thirty (30) days subsequent to the date of cancellation. If a cancelled policy is reinstated, a reinstatement transaction shall be reported to the WCIRB no later than thirty (30) days subsequent to the issuance date.

- ~~a. In all instances where a policy is cancelled or reinstated, the cancellation or reinstatement notice or the electronic information included therein shall be reported to the WCIRB no later than sixty (60) days after issuance.~~
- ~~b. If a cancellation or reinstatement notice is submitted to the WCIRB in hard copy, the following information must be provided:
 - ~~(1) Name of the insurer providing coverage (not insurer group name).~~
 - ~~(2) Policy number. The policy number should include all prefixes and suffixes of the policy that is being cancelled or reinstated.~~
 - ~~(3) The cancelled or reinstated policy's original inception and expiration dates. For continuing form policies or fixed-term policies written in excess of one year and sixteen (16) days, if the policy is cancelled or reinstated during the period that an annual rating endorsement is in effect, the inception date of such annual rating endorsement shall be substituted for the inception date of the policy.~~
 - ~~(4) The date of cancellation or reinstatement.~~
 - ~~(5) The date the cancellation was mailed to the insured.~~
 - ~~(6) The reason for the cancellation.~~~~

* * * * *

Recommendation

Amend Part 2, Section II, *Policy Period*, to (1) remove outdated language regarding continuing form policies and (2) incorporate changes for clarity and consistency.

PROPOSED

Section II – Policy Periods

1. Policy Period

- ~~a. The rules of this Plan are based on a policy period of one year.~~
- ~~b. Policies may be written and issued for periods of less than one year.~~

c. ~~Policies may be written and issued for periods in excess of one year.~~

(1) ~~A policy~~ Policies written and issued for a period of ~~not longer than~~ not exceeding one year and sixteen (16) days shall be treated as if the ~~policy~~ policies were written for a period of one year.

(2) ~~Any policy that is~~ Policies written for a period in ~~excess of~~ exceeding one year and sixteen (16) days ~~must~~ shall be written as a continuing form or fixed-term policy, ~~as indicated in Rule 2,~~
~~below.~~

2. Continuing Form ~~Policy~~ Policies or Fixed-Term ~~Policy~~ Policies Written in Excess of One Year and Sixteen (16) Days

a. A policy that contains an agreement that the insurer will issue, and the policyholder will accept, ~~such~~ endorsements changing the terms of the policy as may be required to achieve conformity with subsequent legislation or ~~with subsequent~~ rules and regulations that may be approved by the Insurance Commissioner may be written ~~on~~ as a continuing form or fixed-term ~~basis~~ policy for a period in excess of one year and sixteen (16) days.

b. ~~Such~~ Continuing form or fixed-term ~~policy~~ policies written in excess of one year and sixteen (16) days ~~must~~ shall conform to all rules and regulations applying to policies written for one year or less.

c. All rules and regulations approved by the Insurance Commissioner subsequent to the effective date of a continuing form or fixed-term policy written in excess of one year and sixteen (16) days shall apply to the policy as though it consisted of consecutive policies, each with a policy period of one full year, ~~except in those instances when~~ or of less than one full year if the insurer or the policyholder ~~wants~~ decided to establish a different policy effective date, which will be treated as a short-term policy.

(1) ~~For a continuing form policy, the first period of coverage shall be treated as a short term policy, and the effective dates of the short term period must be endorsed on the policy at its inception.~~

(2) ~~For a fixed term policy, either the first period or last period of coverage shall be treated as a short term policy. A policy period endorsement showing the effective dates of the policy periods into which the policy is divided must be endorsed on the policy at policy inception.~~

d. The extension of a continuing form policy beyond one year and sixteen (16) days requires ~~the~~ submittal of an annual rating ~~rate~~ endorsement. ~~Pursuant to Part 2, Section 1, Rule 1b, Annual Rating Endorsements, an annual rating endorsement shall be submitted~~ transaction to be reported to the WCIRB to take effect on the effective date of the second period of coverage and annually thereafter for each continuing form policy written for a period in excess of one year and sixteen (16) days.

e. Annual ~~Rating~~ rate ~~E~~endorsements ~~must~~ shall be ~~submitted~~ reported annually for each period following the first period on all fixed-term policies written in excess of one year and sixteen (16) days.

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Recommendation

Amend Part 2, Section III, *Additional Electronic Reporting Requirements*, to reflect current electronic policy reporting requirements; and (2) incorporate changes for clarity and consistency.

PROPOSED

Section III – ~~Additional Electronic Reporting Requirements~~

~~All Policy Documents submitted to the WCIRB electronically shall be reported as required for California in WCPOLS except as indicated below.~~

1. ~~Policy~~Header Record Reporting~~(Record 01)~~

~~a. Header Record Information (Record 01)~~

All Header Record (Record 01) data and fields shall be reported as required for California in WCPOLS and as further detailed below.

~~(1) a.~~ Legal Nature of Insured Code

Report the code that best describes the type of entity(ies) being insured.

Code	Description
01	Individual
02	Partnership
03	Corporation
04	Association, Labor Union, Religious Organization
05	Limited Partnership
06	Joint Venture
07	Common Ownership
09	Joint Employers
10	Limited Liability Company (LLC)
11	Trust or Estate
13	Limited Liability Partnership (LLP)
14	Governmental Entity
99	Other

The use of “07”, Common Ownership, is permitted only for policies insuring two or more entities if the entities are combinable in accordance with the Experience Rating Plan.

The use of “09”, Joint Employers, is permitted when two or more entities do not share common ownership but have joint liability to pay workers’ compensation to employees engaged in connection with the same work but are not a partnership or a joint venture.

The use of “99”, Other, is only permitted if none of the other values are applicable. If reporting “99”, further detail in Text for “Other” Legal Nature of Entity ~~must~~shall be provided.

~~b2. Name Record Information (Record 02)~~

All Name Record (Record 02) data and fields shall be reported as required for California in WCPOLS and as further detailed below.

Each name ~~must~~shall be reported on a separate name record. Related names, such as ~~a~~the “sole proprietor’s” name, ~~and~~ the associated trade name or “DBA,” ~~must~~shall each have a separate record and may be linked using the Name Link Identifier/Continuation Sequence Number. A husband and wife or registered domestic partnership ~~must~~shall have each person’s complete name reported in a separate record.

Insuring two or more legal entities on a single policy is subject to the provisions and limitations set forth in the *Miscellaneous Regulations for the Recording and Reporting of Data—1995, Part 2, Workers' Compensation Forms and Coverage, Section III, Additional Interests.*

~~(1)~~a. Name of Insured

Report the name of the insured subject to the following:

- (a~~1~~) For individuals, report the name in the following format: Last Name, First Name, Middle Name or Initial. The commas are delimiters and are required when reporting individual names.
- (b~~2~~) For partnerships, report the name of each general partner as required in the other sections of this rule. Each partner within the partnership ~~must~~shall be a legal entity such as an individual, a partnership or a corporation. Trade names or fictitious business names cannot be designated as partners.
- (e~~3~~) For corporations, report the name exactly as shown in the articles of incorporation.
- (d~~4~~) For associations, labor unions or religious organizations, report the name exactly as shown in the agreement of association or other document of organization.
- (e~~5~~) For limited partnerships, report the name of each general partner as required in the other sections of this rule. Each partner within the partnership ~~must~~shall be a legal entity such as an individual, a partnership or a corporation. Trade names or fictitious business names cannot be designated as partners. Limited partners should not be reported, but if reported, the term "limited partner" ~~must~~shall be shown in parenthesis following the name of each limited partner.
- (f~~6~~) For joint ventures, report the name of each member as required in the other sections of this rule. Each member ~~must~~shall be a legal entity such as an individual, a partnership or a corporation. Trade names or fictitious business names cannot be designated as members of a joint venture.
- (g~~7~~) For entities that share common ownership, report the name of each entity as required in the other sections of this rule.
- (h~~8~~) For joint employers, report the name of each entity as required in the other sections of this rule.
- (i~~9~~) For LLCs, report the name of the LLC exactly as shown in the articles of organization.
- (j~~10~~) For trusts or estates, report the name exactly as shown in the trust agreement or other legal document, which establishes the trust or estate. The name of each trustee, administrator or executor ~~must~~shall also be reported as required in the other sections of this rule.
- (k~~11~~) For LLPs, report the name of each general partner as required in the other sections of this rule. Each partner within the partnership ~~must~~shall be a legal entity such as an individual, a partnership or a corporation. Trade names or fictitious business names cannot be designated as partners. Limited partners should not be reported, but if reported, the term "limited partner" ~~must~~shall be shown in parenthesis following the name of each limited partner.
- (l~~12~~) For governmental entities, report the legal name of the governmental entity.
- (m~~13~~) For bankruptcies and receiverships, report the name of the receiver or debtor as required in the other sections of this rule. The term "receiver" or "debtor in possession" ~~must~~shall be shown in parenthesis following the name of the receiver.
- (n~~14~~) For policies covering employee leasing arrangements written in the name of the labor contractor, report the name of the labor contractor depending on the type of entity as required in the other sections of this rule. If reporting the client's name, the phrase "Leased Coverage For" or the acronym "LCF" ~~must~~shall be used.

~~(e15)~~ For policies covering employee leasing arrangements written in the name of the client, report the name of the client depending on the type as required in the other sections of this rule.

~~(p16)~~ If any descriptor information such as “limited partner” or “DBA” is included, it ~~must~~shall be in parenthesis.

~~e3.~~ State Premium Record (Record 04)

All State Premium Record (Record 04) data and fields shall be reported as required for California in WCPOLS except as indicated below.

~~(1)a.~~ Estimated State Standard Premium Total

Report the estimated ~~total~~-state standard premium ~~amount from the policy or policy endorsement~~total for the entire policy period. See Part 4, *Unit Statistical Reporting Requirements*, Section II, *Definitions*, Rule 12, *Final Premium(s)*.

~~d4.~~ Exposure Record ~~Information~~-(Record 05)

All Exposure Record (Record 05) data and fields shall be reported as required for California in WCPOLS and as further detailed below.

~~(1)a.~~ Classification Code

Report the applicable standard, approved non-standard or USL&H classification code.

~~(2)b.~~ Estimated Exposure Amount

Report the amount that is the basis for determining premium on a per classification level.

~~(3)c.~~ Estimated Premium Amount

For statistical code 9740, *Catastrophe Provisions for Terrorism*, report the estimated premium amount associated with this statistical code, if applicable. The estimated premium amount for standard classification codes and other statistical codes need not be reported.

~~e.~~ Endorsement Identification Record Information (Record 07)

~~(1)~~ Record Type Code

~~(a)~~ Report the form number for the policy conditions.

~~(b)~~ Report the form number(s) for the information page(s) attached to the policy.

~~(c)~~ Report the form number for every endorsement attached to the policy.

~~(d)~~ Report the form number for every ancillary agreement attached to the policy. Ancillary agreement is defined in Title 10, California Code of Regulations, Section 2250(f).

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Recommendation

Amend Part 4, *Unit Statistical Report Filing Requirements*, Section III, *Link Data and Header Record Information*, Rule 2, *Policy Effective Date*, Subrules b and c, to remove outdated language regarding continuing form policies; and (2) incorporate changes for consistency.

PROPOSED

Section III – Link Data and Header Record Information

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2. Policy Effective Date

Report the inception date that corresponds exactly to that shown on the policy information page or the inception date changed by endorsement.

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~~b. Continuing Form Policies~~

~~For each successive annual period, treat the policy in the same manner as though it were an annual policy effective in the same month and on the same day of the month as the inception date of the annual period. If there has been a first period of coverage, which has been treated as a short-term policy in accordance with Part 2, Section II, Rule 2, *Continuing Form Policy or Fixed-Term Policy Written in Excess of One Year and Sixteen Days*, of this Plan, such first period shall also be treated as a separate short-term policy for reporting purposes under this Plan.~~

~~e.b. Continuing Form and Fixed-Term Policies~~

~~For each successive annual period, treat the policy in the same manner as though it were an annual policy effective in the same month and on the same day of the month as the inception date of the annual period. If there has been a first period or last period of coverage, which has been treated as a short-term policy in accordance with Part 2, Section II, Rule 2, *Continuing Form Policyies or Fixed-Term Policyies Written in Excess of One Year and Sixteen (16) Days*, of this Plan, such period shall also be treated as a separate short-term policy for reporting purposes under this Plan.~~

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Item III-C

Payroll – Remuneration: Overtime

The *California Workers' Compensation Uniform Statistical Reporting Plan—1995* (USRP) defines the types of employee compensation that are considered payroll for statistical reporting purposes. These rules are intended to capture the monetary value at which an employee's service is compensated and ensure that this amount is a reasonable proxy for the exposure during the policy period. Among these provisions are rules directing how overtime pay is treated in determining reportable payroll. Following its review of the overtime rule, staff identified areas of potential ambiguity that could result in the misapplication of how overtime pay is to be treated.

The objective of the overtime rule is to ensure that reportable payroll is based on an accurate measure of exposure. The proper application of this rule is essential to the accuracy of ratemaking data, experience rating and policyholder premium.

The USRP¹ defines overtime remuneration, in part, as the portion of the total remuneration that is derived from the application of an increase above and in addition to the regular rate of pay or regular piecework rate because of time worked on holidays, Saturdays or Sundays or because of the number of hours worked in any one week or day beyond the standard for the industry. The USRP directs that overtime remuneration is included in payroll unless the employer's books and records are maintained so as to show regular and overtime earnings separately by employee and in summary by type of operation performed. The rule directs that when the employer has maintained sufficient books and records, "overtime remuneration shall be excluded from premium computation."

The USRP provides additional direction regarding the treatment of overtime pay for determining the hourly wage for dual wage construction or erection classifications. Specifically, Section IV, *Special Industry Classification Procedures*, Rule 2a(2)(b) directs that the "premium portion of overtime pay" shall not be used to determine the total remuneration for the regular hourly wage calculation for dual wage classifications.

Analysis

Staff's analysis of the overtime rule found that (a) the rule meets its purpose of excluding from reportable payroll the portion of overtime payments that are above and in addition to the regular rate of pay; and (b) the rule could be improved for clarity and consistency.

1. Potentially Unclear References

The USRP uses the terms "overtime pay," "overtime payments" and "overtime remuneration," which may appear to be interchangeable, but they are not. Similarly, the USRP uses "premium portion of overtime pay," "premium overtime pay" and "excess or premium overtime," when referring to "overtime remuneration," and refers to "premium computation" rather than "reportable payroll."

Staff recommends revising the overtime rule to more clearly define terms and how the rule applies. For clarity and consistency, staff recommends replacing the term "overtime remuneration" and any other terms used to refer to "overtime remuneration" with "premium portion of overtime pay" and creating a separate definition for this term, specifying that it is the portion of overtime pay that is above and in addition to the regular rate of pay. Although the word "premium" may be associated with amounts paid for an insurance policy, the term "premium portion of overtime pay" is commonly used by the California Department of Industrial Relations (DIR), the United States Department of Labor and the workers' compensation premium audit industry. Thus, staff determined that there will be no ambiguity when using this term.

¹ See Part 3, Section V, *Payroll – Remuneration*, Rule 1c.

2. Clarifying the Examples

The DIR publishes detailed examples of wage calculations that, while not directly related to workers' compensation basis of payroll, help employers comply with wage and hour laws. Further, the DIR publishes comprehensive examples detailing the calculation of earnings, including overtime, for employees paid on a piecework or commission basis. The current USRP examples regarding piecework and commissions do not address common situations and are not essential to the calculation of the premium portion of overtime pay. Therefore, in order to avoid any potential conflict or confusion between the USRP examples and other California wage and hour requirements, staff recommends removing the two examples that detail the calculation of overtime earnings for employees paid on a piecework or commission basis and replace them with a reference to the DIR's examples.

In addition to the above, the WCIRB recommends edits to the overtime rule for clarity. The intent is to ensure that the rule is clearly stated without making any substantive changes to the way in which overtime remuneration is currently reported.

Recommendations

The WCIRB recommends the following:

1. Amend Part 3, *Standard Classification System*, Section II, *Classification Terminology*, to add Rule 22 to define "Premium Portion of Overtime Pay" as the portion of overtime payments that is above and in addition to the regular rate of pay, renumber all subsequent rules and capitalize all instances of the term "premium portion of overtime pay."
2. Amend Part 3, Section V, Rule 1c, *Overtime Remuneration*, to more clearly define terms and how the rule applies and to incorporate the term "Premium Portion of Overtime Pay."
3. Remove Examples 3 and 4 regarding piecework and commission pay from Rule 1c, *Overtime Remuneration*, and replace them with a reference to the DIR's examples for piecework and commission overtime pay for clarity and consistency with California wage and hour laws.
4. Incorporate additional editorial changes for clarity and consistency.

Recommendation

Amend Part 3, *Standard Classification System*, Section II, *Classification Terminology*, to add Rule 22 to define “Premium Portion of Overtime Pay,” renumber all subsequent rules and capitalize all instances of the term “premium portion of overtime pay.”

PROPOSED

Section II – Classification Terminology

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22. Premium Portion of Overtime Pay

The portion of overtime payments that is above and in addition to the regular rate of pay. (See also Section V, *Payroll Remuneration*, Rule 1c, *Overtime Payments*.)

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Recommendation

Amend Part 3, Section V, *Payroll – Remuneration*, Rule 1, *Payroll – Remuneration*, Subrule c, *Overtime Remuneration*, to (1) more clearly define terms and how the rule applies, (2) incorporate the term “Premium Portion of Overtime Pay” for clarity and (3) remove Examples 3 and 4, and instead reference the Department of Industrial Relations’ examples for piecework and commission overtime pay for clarity and consistency with California wage and hour laws.

PROPOSED

Section V – Payroll – Remuneration

1. Payroll – Remuneration¹

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c. Overtime Remuneration Payments

~~Overtime Remuneration is that portion of the total remuneration which is derived from the application of an increase above and in addition to the regular rate of pay or regular piecework rate (or additional pay for hours not worked but allowed in lieu of such an increased rate).~~ Employees may receive overtime payments because of time worked on holidays, Saturdays or Sundays or because of the number

of hours worked in any one week or day is beyond the standard for the industry, or because of participation by athletic teams in play-off, championship, or similar games which are in excess of their regularly scheduled league games. Overtime remuneration payments does not include: extra pay for swing shifts or graveyard shifts, for working certain hours on the clock, or for incentive or bonus pay figured on volume without regard to hours worked.

The regular rate of remuneration per game for an athletic team is the remuneration earned by such team for the regular season, divided by the number of regularly scheduled league games in which the team engaged during the season. Remuneration received for each play-off, championship or similar game, which is in excess of the regular rate of remuneration per game, is overtime remuneration. Overtime payments are generally paid at a rate that is at least one and one-half times the employee's regular rate of pay; however, overtime may also be paid at double time or some other multiplier of the regular rate of pay. If overtime is paid at one and one-half times the regular rate of pay, one-third (1/3) of the total overtime pay is the Premium Portion of Overtime Pay. For employers that are operators of an athletic team, remuneration earned for each post season game that exceeds the average remuneration per regular season game is the Premium Portion of Overtime Pay.

~~In accordance with Section IV, Special Industry Classification Procedures, Rule 4c, Payroll Inclusions, Subrule (3), all payments to workers performing farming operations shall be included as remuneration when paid on a price per unit (piecework), contract or measure basis.~~

~~Overtime remuneration shall be included in the payroll except as follows~~The portion of overtime payments representing the regular rate of pay shall be included as payroll. The Premium Portion of Overtime Pay shall be excluded from the payroll only in the following situations:

- ~~(1) If the eEmployer's books and records are (other than operators of athletic teams) maintained so as to records that~~ show separately by employee and in summary by type of operation performed either:
 - ~~(a) remuneration earned at regular or straight time rates or regular piecework rates of pay for total all hours worked, and the Premium Portion of Overtime Pay, or~~
 - ~~(b) overtime remuneration earned at regular rates of pay for all non-overtime hours worked and total remuneration earned for overtime hours.~~

~~overtime remuneration shall be excluded from premium computation.~~
- ~~(2) If the employer's books and records are maintained so as to show separately by employee and in summary by type of operation performed:~~
 - ~~(a) remuneration earned at regular or straight time rates or regular piecework rates of pay for hours worked when there is no overtime remuneration, and~~
 - ~~(b) total remuneration earned for those hours worked when there is overtime remuneration, one third (1/3), or such other portion of the total remuneration earned for those hours worked when there is overtime remuneration, shall be excluded from the payroll.~~
- ~~(3)(2) If the eEmployers is the that are operators of an athletic team and the employer's books and maintain records are maintained so as to that show: the average regular rate of remuneration earned per game for the regular season and remuneration received for each playoff, championship or similar post-season game.~~

Employers engaged in farming operations where employees are paid on a price per unit (piecework), contract or measure basis shall not deduct any payroll as the Premium Portion of Overtime Pay; payroll shall be based upon the total remuneration earned by such persons. Refer to Section IV, Special Industry Classification Procedures, Rule 4b, Payroll (Farms).

- ~~(a) the number of play-off, championship, or similar game(s) in which the team engaged during the season, and~~
- ~~(b) the regular rate of remuneration per game, or the total remuneration earned by such athletic team during the regular season and the number of regularly scheduled league games in which the team participated during said season, overtime remuneration shall be excluded from the payroll.~~

Example 1 – Premium Portion of Overtime Pay Shown Separately

~~The employer compensates its workers on an hourly basis. The employer records the total hours worked at the regular rate of pay and the overtime hours worked at the overtime premium rate. The employer compensates its workers on an hourly basis. An employee is paid a regular hourly rate of \$1020.00 per hour. The worker works 9 hours per day, or 45 hours in a 5-day week. The worker was paid 1/2 times the regular rate as overtime remuneration for five overtime hours.~~

~~Regular Pay – 45 total hours x \$1020.00 per hour = \$450900.00~~

~~Excess or Premium Overtime Premium Rate – \$1020.00 x 1/2 = \$510.00 per hour~~

~~Excess or Premium Portion of Overtime Pay – \$510.00 x 5 hours overtime = \$2550.00~~

~~Total Payroll before Potential Adjustment – (\$450900.00 (Regular Pay) + \$2550.00 (Premium Portion of Overtime Pay)) = \$475950.00~~

~~Reportable Payroll (if conditions are met) – \$950.00 – \$50.00 (Premium Portion of Overtime Pay) = \$900.00~~

~~In Example 1, the \$2550.00 paid to the employee as excess or the pPremium pPortion of eOvertime Pay is eligible for exclusion as overtime remuneration.~~

Example 2 – Premium Portion of Overtime Pay Not Shown Separately

~~The employer compensates its workers on an hourly basis. The employer records the total hours worked at the regular rate of pay and the total overtime hours worked at the overtime rate (regular rate plus the overtime premium rate). The employer compensates its workers on an hourly basis. An employee is paid a regular hourly rate of \$1020.00 per hour. The worker works 9 hours per day, or 45 hours in a 5-day week. The worker was paid an overtime rate of 1-1/2 times the regular rate as overtime remuneration for five overtime hours.~~

~~Regular Pay – 40 regular hours x \$1020.00 per hour = \$400800.00~~

~~Overtime Rate – \$1020.00 x 1.5 = \$1530.00 per hour (\$20.00 Regular Rate + \$10.00 Overtime Premium Rate)~~

~~Total Overtime Payment – \$1530.00 x 5 hours overtime = \$75150.00~~

~~Excess or Premium Portion of Overtime Pay – \$75150.00 x 1/3 = \$2550.00~~

~~Total Payroll before Potential Adjustment – (\$400800.00 (Regular Pay) + \$75150.00 (Overtime Payment)) = \$475950.00~~

~~Reportable Payroll (if conditions are met) – \$950.00 – \$50.00 (Premium Portion of Overtime Pay) = \$900.00~~

~~In Example 2, 1/3 of the \$75.00 (or the \$2550.00) paid to the employee as the Premium Portion of eOvertime Pay is eligible for exclusion as excess or premium overtime remuneration. The fraction used to determine the Premium Portion of Overtime Pay will vary depending on the overtime premium rate. For example, overtime may be paid at 1-1/2 times, 2 times or some other multiplier of the regular rate of pay. In this example, the~~

worker was paid at 1-1/2 times the regular rate, so one-third (1/3) of the overtime payment is the Premium Portion of Overtime Pay.

Example 3 – Piecework or Commission

When the employer compensates its workers on a piece rate or commission basis in accordance with California wage and hour laws, refer to the piecework and commission wage calculation examples published by the Department of Industrial Relations, and in the Division of Labor Standards Enforcement (DLSE) Enforcement Policies and Interpretations Manual to calculate the regular rate of pay. The portion of overtime earnings that is above and in addition to the regular rate of pay is eligible for exclusion as the Premium Portion of Overtime Pay if the conditions of this rule are met.

(a) Overtime Paid at 1-1/2 Times the Piece Rate

~~The employer compensates its workers on a piece rate basis. Records show the pieces completed by the hour and an overtime factor is applied to the piece rate for work completed during the overtime hour(s).~~

~~An employee earns a regular piece rate of \$1.00 per piece. The worker makes 90 pieces in a 9-hour day. The worker made 10 pieces between the eighth and ninth hours and was paid 1-1/2 times the regular piece rate for the pieces completed during the overtime period.~~

~~Straight Pay by Piece — 80 pieces x \$1.00 per piece = \$80.00~~

~~Total Overtime Pay — 10 pieces x \$1.50 per piece = \$15.00~~

~~Excess or Premium Overtime — \$15.00 x 1/3 = \$5.00~~

~~Total Payroll (\$80 + 15) = \$95.00~~

~~In Example 3(a), 1/3 of the \$15.00 combination straight time and overtime pay, or \$5.00, is eligible for exclusion as overtime remuneration.~~

(b) Piece Rate — Overtime Computed Based on Regular Hourly Rate

~~The employer compensates its workers on a piece rate basis. The employer's records do not reflect the pieces completed by the hour. A regular rate of pay is computed with an overtime factor applied to the regular rate of pay for work completed during the overtime hour(s).~~

~~An employee earns a regular piece rate of \$1.00 per piece. The worker makes 90 pieces in a 9-hour day. The worker was paid 1/2 times the regular rate as overtime remuneration.~~

~~Straight Pay by Piece — 90 pieces x \$1.00 per piece = \$90.00~~

~~Regular Rate of Pay — \$90.00 divided by 9 hours = \$10.00 per hour~~

~~Excess or Premium Overtime Rate — \$10.00 x 1/2 = \$5.00~~

~~Excess or Premium Overtime — \$5.00 x 1 hour overtime = \$5.00~~

~~Total Payroll (\$90 + 5) = \$95.00~~

~~In Example 3(b), the \$5.00 paid to the employee as overtime is eligible for exclusion as overtime remuneration.~~

Example 4 — Commission — Overtime Computed Based On Regular Hourly Rate

~~The employer compensates employees on a commission basis. A regular rate of pay is computed with an overtime factor applied to the regular rate of pay for work completed during the overtime hour(s).~~

An automobile mechanic earns 40% of the book rate (hourly rate charged the customer) for each repair completed. The employer's labor rate billed to customers is \$80 per hour. During the period, the mechanic worked 44 hours and completed jobs with 55 billable hours. To determine the regular rate of pay, the daily or weekly remuneration must be divided by the daily or weekly hours.

Total Repair Revenue — 55 billable hours x \$80 per hour = \$4,400.00

Employee's Remuneration — \$4,400.00 x 40% = \$1,760.00

Regular Rate of Pay — \$1,760.00 divided by 44 hours = \$40.00 per hour

Premium Overtime Rate — \$40.00 x 1/2 = \$20.00

Premium or Excess Overtime — \$20.00 x 4 overtime hours = \$80.00

Total Payroll (\$1,760 + 80) = \$1,840.00

In Example 4, the \$80.00 paid to the employee as overtime remuneration is eligible for exclusion as overtime remuneration.

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Item III-D

Draft Study of Assignments to Standard Exception Classifications

1803, *Stone Cutting or Fabrication – shop*
4295(1), *Printing Operation – screen printing*
4295(2), *Screen Printed Merchandise Dealers – all other employees*
4299(1), *Printing Operation – all other employees*
4492, *Sign Mfg. – metal, plastic or wood*
5606, *Contractors – construction or erection*
7365, *Taxicab Operations – all employees*
7410, *Aircraft Operation – agricultural*
7428(1), *Aircraft Operation – other than agricultural or scheduled air carriers*
7500, *Gas Works – all operations*
7520, *Water Companies – all employees*
7539, *Electric Power Companies – all operations*
7607(1), *Video Post-Production – computer or electronic*
7721(1), *Detective or Private Investigative Agencies*
8015, *Stores – furniture*
8017(9), *Product Demonstrators or Sample Distributors – by contractors*
8720(1), *Inspection for Insurance, Safety or Valuation Purposes*
8720(4), *Unmanned Aircraft System Operation*
8755, *Labor Unions – employees engaged outside of office*
8813(1), *Printing Operation – editing, designing, proofreading and photographic composing*
8846(1), *Printing Operation – screen printing*
9016(1), *Amusement or Recreational Facilities*
9033, *Housing Authorities – including resident or on-site managers*
9182, *Athletic Teams or Athletic Facilities*
9220(1), *Cemetery Operation – all employees*
9220(2), *Crematory Operation – all employees*
9507, *Sign Painting or Lettering and Quick Sign Shops – shop or outside*
9529(2), *Decorating – interior or exterior*
9549, *Advertising Companies – outdoor*
9610, *Motion Pictures – production*

Executive Summary

Objective

The WCIRB receives a significant number of questions from insurers, agents/brokers and employers regarding the application of classifications that contain footnotes directing the assignment of specific operations, duties or employments to Standard Exception classifications 8810, *Clerical Office Employees*, or 8742, *Salespersons – Outside*. To address these questions and ensure that Standard Exception classifications are consistently applied, the WCIRB reviewed the 30 classifications that contain such footnotes for consistency with the restrictions outlined in Part 3, *Standard Classification System*, Section III, *General Classification Procedures*, Rule 4, *Standard Exceptions*, of the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* (USRP) (Standard Exceptions Rule). WCIRB staff compared each footnote directive to Classification 8810 or 8742 and the operations, duties or employments in question in order to determine if the current classification procedure remains appropriate and, if so, if the footnote correctly references the Standard Exceptions Rule.

Findings

Based on staff's review of the 30 classifications that include a footnote directive to Classification 8810, *Clerical Office Employees*, or Classification 8742, *Salespersons – Outside*, the WCIRB determined:

1. Twelve classifications address operations, duties or employments that are compatible with the Standard Exceptions definitions, and these directives properly state that the assignment of these operations to a Standard Exception classification is subject to the required rule.
2. Four classifications address duties or employments that are compatible with the Standard Exceptions definitions, but do not state that the assignment of these operations to a Standard Exception classification is subject to the Standard Exceptions Rule, nor do they cite the rule.
3. Six classifications provide generic instructions regarding the assignment of Classification 8810 or 8742 that are unnecessary as they are duplicative of general classification procedures and not unique to the subject classification.
4. Eight classifications describe operations or duties that often fall outside of the scope of the Standard Exceptions definitions and may be unique to the subject classification.

Recommendations

Based on the findings, the WCIRB recommends the following:

1. Retain the existing footnotes to the twelve classifications that (1) provide appropriate direction regarding how the subject operations should be classified, (2) properly state that the assignment of these operations to a Standard Exception classification is subject to the required rule and (3) cite the rule.
2. Amend the footnotes to the four classifications that, while providing appropriate direction, do not state that the assignment of these operations to a Standard Exception classification is subject to the Standard Exceptions Rule and do not cite the rule.
3. Delete the footnote directives for the six classifications that assign Classification 8810 or 8742 to generic operations or job duties that are duplicative of general classification procedures.
4. Delete the footnote directives for the eight classifications that assign Classification 8810 or 8742 to operations that are not compatible with the Standard Exceptions definitions and amend the classifications where applicable to provide clarity regarding how these operations should be classified.

Introduction

The WCIRB reviewed all 30 classifications that contain footnotes assigning specific operations, duties or employments to Classification 8810, *Clerical Office Employees*, or 8742, *Salespersons – Outside*. Classifications 8810 and 8742 are *Standard Exceptions* and are subject to the restrictions outlined in Part 3, *Standard Classification System*, Section III, *General Classification Procedures*, Rule 4, *Standard Exceptions*, of the USRP (Standard Exceptions Rule). WCIRB staff evaluated each footnote directive to Classification 8810 or 8742 and the operations, duties or employments in question in order to determine if the current classification procedure remains appropriate and, if so, if the footnote correctly references the Standard Exceptions Rule.

Directive Types

After review, staff categorized the 30 classifications based on four scenarios:

Group 1

The first group consists of 12 classifications with footnote directives that clarify how certain operations should be classified and address operations, duties or employments that are compatible with the Standard Exceptions definitions. Additionally, where these directives point to Classification 8810 or 8742, they clarify that the operations, duties or employments should be assigned to 8810 or 8742 only if they meet the restrictions outlined in the required rule, and they cite the rule. Staff determined that these directives provide valuable information specific to the classification in question and direct a classification assignment that is not inconsistent with the Standard Exceptions Rule. The 12 classifications in this group and the footnotes at issue are identified below:

Classification	Footnote
7410, <i>Aircraft Operation – agricultural – dusting, spraying or seeding – not members of the flying crew</i>	Unmanned Aircraft Systems (aerial drones) operating crew members working remotely from an office location with no exposure outside of the clerical office shall be classified as 8810, <i>Clerical Office Employees</i> , subject to the Standard Exceptions rule. See Section III, Rule 4, <i>Standard Exceptions</i> .
7428(1), <i>Aircraft Operation – other than agricultural or scheduled air carriers – not members of the flying crew – including gate and ticket counter personnel at airports – N.O.C.</i>	Unmanned Aircraft Systems (aerial drones) operating crew members working remotely from an office location with no exposure outside of the clerical office shall be classified as 8810, <i>Clerical Office Employees</i> , subject to the Standard Exceptions rule. See Section III, Rule 4, <i>Standard Exceptions</i> .
9610, <i>Motion Pictures – production – in studios and outside – all employees</i>	Employees engaged exclusively in the electronic editing of digital files using computerized editing equipment are assignable to Classification 8810, <i>Clerical Office Employees</i> , subject to the Standard Exceptions rule. See Section III, Rule 4, <i>Standard Exceptions</i> . Employees who create animation using computer or digital applications are assignable to Classification 8810, <i>Clerical Office Employees</i> , subject to the Standard Exceptions rule. See Section III, Rule 4, <i>Standard Exceptions</i> .
4492, <i>Sign Mfg. – metal, plastic or wood – N.O.C.</i>	Employees engaged exclusively in the design or production of adhesive lettering or graphics using office type computers or plotters/printers shall be classified as 8810, <i>Clerical Office Employees</i> , subject to the Standard Exceptions rule. See Section III, Rule 4, <i>Standard Exceptions</i> .
9507, <i>Sign Painting or Lettering and Quick Sign Shops – shop or outside – including</i>	Employees engaged exclusively in the design or production of painted, printed or adhesive lettering or

Classification	Footnote
<i>counterpersons</i>	graphics using office type computers or plotters/printers shall be classified as 8810, <i>Clerical Office Employees</i> , subject to the Standard Exceptions rule. See Section III, Rule 4, <i>Standard Exceptions</i> . The application of painted, printed or adhesive lettering or graphics onto a surface shall be classified as 9507.
1803, <i>Stone Cutting or Fabrication – shop</i>	Employees engaged exclusively in the design or production of stencils using office type computers or plotters/printers shall be classified as 8810, <i>Clerical Office Employees</i> , subject to the Standard Exceptions rule. See Section III, <i>General Classification Procedures</i> , Rule 4, <i>Standard Exceptions</i> .
7365, <i>Taxicab Operations – all employees</i>	Dispatchers engaged in clerical activities shall be separately classified as 8810, <i>Clerical Office Employees</i> , subject to the Standard Exceptions rule. See Section III, Rule 4, <i>Standard Exceptions</i> .
8720(4), <i>Unmanned Aircraft System Operation – aircraft system and payload total combined weight of less than 55 pounds – including Outside Salespersons</i>	Unmanned Aircraft Systems (aerial drones) operating crew members working remotely from an office location with no exposure outside of the clerical office shall be classified as 8810, <i>Clerical Office Employees</i> , subject to the Standard Exceptions rule. See Section III, Rule 4, <i>Standard Exceptions</i> .
7607(1), <i>Video Post-Production – computer or electronic – all employees – including Clerical Office Employees and Outside Salespersons</i>	This classification does not apply to computer or electronic video post-production operations performed in connection with motion pictures, television features, commercials or similar productions by the same employer; such operations shall be classified as 8810, <i>Clerical Office Employees</i> , subject to the Standard Exceptions rule. See Section III, Rule 4, <i>Standard Exceptions</i> .
7721(1), <i>Detective or Private Investigative Agencies</i>	Employees who solely conduct investigations by researching documents and conducting interviews at locations away from the employer's premises shall be classified as 8742, <i>Salespersons – Outside</i> , subject to the Standard Exceptions rule. See Part 3, Section III, Rule 4, <i>Standard Exceptions</i> .
8017(9), <i>Product Demonstrators or Sample Distributors – by contractors – in stores</i>	This classification does not apply to employees of manufacturers or distributors engaged in product demonstration or sample distribution. Such operations shall be classified as 8742, <i>Salespersons – Outside</i> , subject to the Standards Exception rule (see Section III, Rule 4, <i>Standard Exceptions</i>) or the applicable manufacturing, store or dealer classification.
8015, <i>Stores – furniture – wholesale or retail</i>	This classification does not apply to the operation of furniture galleries or showrooms that sell exclusively from samples to buyers for stores (no direct sales) and where no inventory (exclusive of showroom samples) is maintained at the gallery or showroom location. Such gallery or showroom salespersons shall be classified as 8742, <i>Salespersons – Outside</i> , provided they have no other duties of any kind in the service of the employer except clerical work or outside sales. See Part 3, Section IV, Rule 6, <i>Stores</i> .

Group 2

The second group is comprised of four classifications with footnote directives that also provide clarity regarding how certain operations that are compatible with the Standard Exceptions definitions should be classified. However, these directives neither indicate that the assignment is subject to the rules set forth in the Standard Exceptions Rule, nor do they cite the rule. The information contained in the footnotes is valuable for the proper assignment of the subject operations, but without direction that the assignment is subject to the rule, the directive may suggest that the footnote supersedes the Standard Exceptions Rule, which is not the intended outcome. These four classifications are:

Classification	Footnote
5606, <i>Contractors – construction or erection – executive level supervisors – no direct supervision – division of a single employee's payroll with any other classification is not permitted</i>	Classification 5606 does not apply to employees whose job site duties are limited to estimating, outside sales or public relations. Employees whose non-clerical duties are confined to visiting job sites for the purpose of pre-construction estimating, or for meeting with clients or other project representatives, are classified as 8742, <i>Salespersons – Outside</i> , provided they have no supervisory responsibilities over construction operations and they do not walk through job sites for purposes such as assessing construction progress, evaluating quality or determining compliance with safety standards.
9549, <i>Advertising Companies – outdoor – selling space for advertising purposes – including shop, yard or storage operations; the erection, painting, repair and maintenance, or removal of signs; bill posting; and sign painting or lettering in or upon buildings or structures</i>	The display of hand-held advertisement signs and walking billboards (human sign holders) at locations, including but not limited to sidewalks and street corners shall be classified as 8742, <i>Salespersons – Outside</i> .
9182, <i>Athletic Teams or Athletic Facilities – all employees other than players, umpires, referees and game officials</i>	Athletic scouts shall be classified as 8742, <i>Salespersons – Outside</i> .
8720(1), <i>Inspection for Insurance, Safety or Valuation Purposes – N.O.C. – including Outside Salespersons</i>	Insurance claims or insurance fraud investigation companies that exclusively perform investigations that do not require surveillance of persons without their knowledge shall be classified as 8742, <i>Salespersons – Outside</i> , or 8810, <i>Clerical Office Employees</i> . Insurance claims investigations performed by insurance companies shall be classified as 8822, <i>Insurance Companies</i> . Property appraisal (or property appraisal in combination with clerical activities) on a fee basis shall be classified as 8742, <i>Salespersons – Outside</i> .

Group 3

The third group is comprised of six classifications with footnotes that do not provide value or clarity as they assign generic Standard Exception operations, duties or employments that are not unique or specific to the subject classification to Classification 8810 or 8742.

The group includes several classifications in the *Printing, Publishing and Duplicating* industry group with a footnote stating that “Employees engaged in sales, collection or public relations work in support of commercial printing operations shall be separately classified as 8742, *Salespersons – Outside*.” This footnote was added to these classifications to provide direction for classifying outside sales operations when Classification 8742(5), *Printing Operation – Salespersons*, was eliminated effective January 1, 2018. However, it has been several years since 8742(5) was eliminated. In addition, this type of assignment applies to virtually all classifications, and the directive is duplicative of the definition of

Outside Salespersons found in the Standard Exceptions Rule. These directives may therefore be confusing as they are included in these classifications but not in others.

Similarly, Classification 8755, *Labor Unions – employees engaged outside of office – including Outside Salespersons*, contains a footnote stating that “Employees engaged in clerical office duties exclusively within the office shall be classified as 8810, *Clerical Office Employees*.” This directive was added to clarify how employees working strictly in an office setting should be classified when the classification assignable to the employer is an “outside” classification. The USRP contains several classifications that describe operations that take place away from the employer’s premises, such as classifications that state “away from shop.” It is typical for employers assigned to such classifications to retain some *Clerical Office Employees* that are assignable to Classification 8810, yet no other classifications include such a directive. This assignment is duplicative of the Standard Exceptions Rule and not exclusively applicable to employers assigned to Classification 8755.

The six classifications in this category are:

Classification	Footnote
4299(1), <i>Printing Operation – all other employees – including counterpersons and drivers and their helpers – N.O.C.</i>	Employees engaged in sales, collection or public relations work in support of commercial printing operations shall be separately classified as 8742, <i>Salespersons – Outside</i> , subject to the Standard Exceptions rule. See Section III, Rule 4, <i>Standard Exceptions</i> .
8813(1), <i>Printing Operation – editing, designing, proofreading and photographic composing – including Clerical Office Employees</i>	Employees engaged in sales, collection or public relations work in support of printing operations shall be separately classified as 8742, <i>Salespersons – Outside</i> , subject to the Standard Exceptions rule. See Part 3, Section III, Rule 4, <i>Standard Exceptions</i> .
4295(1), <i>Printing Operation – screen printing – all other employees</i>	Employees engaged in sales, collection or public relations work in support of printing operations shall be separately classified as 8742, <i>Salespersons – Outside</i> , subject to the Standard Exceptions rule. See Part 3, Section III, Rule 4, <i>Standard Exceptions</i> .
8846(1), <i>Printing Operation – screen printing – editing, designing, proofreading and photographic composing – including Clerical Office Employees</i>	Employees engaged in sales, collection or public relations work in support of printing operations shall be separately classified as 8742, <i>Salespersons – Outside</i> , subject to the Standard Exceptions rule. See Part 3, Section III, Rule 4, <i>Standard Exceptions</i> .
4295(2), <i>Screen Printed Merchandise Dealers – all other employees</i>	Employees engaged in sales, collection or public relations work in support of printing operations shall be separately classified as 8742, <i>Salespersons – Outside</i> , subject to the Standard Exceptions rule. See Part 3, Section III, Rule 4, <i>Standard Exceptions</i> .
8755, <i>Labor Unions – employees engaged outside of office – including Outside Salespersons</i>	Employees engaged in clerical office duties exclusively within the office shall be classified as 8810, <i>Clerical Office Employees</i> .

Group 4

The fourth group is comprised of eight classifications with footnote directives assigning Classification 8810 or 8742 to operations or duties that are or may be incompatible with the Standard Exceptions definitions. While these directives may have originally been added to address specific limited circumstances, the directives are not clear and could lead to the misclassification of certain operations, duties or employments. In some instances, the directives cite the *Standard Exceptions* Rule, despite the fact that the subject operations are not consistent with the rule’s restrictions, which may lead to confusion. The eight classifications in this category are::

Classification	Footnote
9529(2), <i>Decorating – interior or exterior – hanging flags or bunting for conventions or celebrations</i>	Interior decorators or designers who operate on a fee basis and do not engage in the installation or placement of furnishings shall be classified as 8742, <i>Salespersons – Outside</i> , subject to the Standard Exceptions rule. See Section III, Rule 4, <i>Standard Exceptions</i> .
9033, <i>Housing Authorities – including resident or on-site managers</i>	Employees engaged exclusively in determining the eligibility of properties owned and operated by separate parties for rental subsidies shall be classified as 8742, <i>Salespersons – Outside</i> , subject to the Standard Exceptions rule. See Section III, Rule 4, <i>Standard Exceptions</i> .
9016(1), <i>Amusement or Recreational Facilities – N.O.C. – all employees other than those engaged in the operation or maintenance of amusement devices, restaurants or retail stores</i>	This classification also applies to automobile or horse race track operations by employers that are not public agencies. Pari-mutuel employees shall be separately classified as 8810, <i>Clerical Office Employees</i> .
9220(1), <i>Cemetery Operation – all employees</i>	Cemetery plot or mausoleum sales counselors shall be classified as 8742, <i>Salespersons – Outside</i> .
9220(2), <i>Crematory Operation – all employees</i>	Cemetery plot or mausoleum sales counselors shall be classified as 8742, <i>Salespersons – Outside</i> .
7539, <i>Electric Power Companies – all operations – including construction or extension of lines</i>	Employees engaged exclusively in meter reading activities (or in combination with clerical office activities) shall be classified as 8742, <i>Salespersons – Outside</i> .
7500, <i>Gas Works – all operations – including construction or extension of lines</i>	Employees engaged exclusively in meter reading activities (or in combination with clerical office activities) shall be classified as 8742, <i>Salespersons – Outside</i> .
7520, <i>Water Companies – all employees – including construction or extension of lines</i>	Employees engaged exclusively in meter reading activities (or in combination with clerical office activities) shall be classified as 8742, <i>Salespersons – Outside</i> .

Each of the eight classifications in the fourth group require individual analysis and revision.

It is important to note that the employers assigned to these eight classifications may retain employees who perform clerical duties and work in clerical office locations, as well as employees who perform sales, collection or public relations work away from the employer's premises and devote the balance of their time to clerical office duties. To the extent the duties of these employees meet the Standard Exception definitions, these employees will remain assignable to Classification 8810 or 8742.

Group 4 Classification Analysis

Classification 9529(2), *Decorating*

This classification contains a footnote stating that "[i]nterior decorators or designers who operate on a fee basis and do not engage in the installation or placement of furnishings shall be classified as 8742, *Salespersons – Outside*, subject to the Standard Exceptions rule. See Section III, Rule 4, *Standard Exceptions*." While this directive does cite the Standard Exceptions Rule and does exclude the placement of furniture from an 8742 assignment, it provides classification direction based on job title and that may lead to inconsistent classification assignments. In some cases, an employee in the role of an interior decorator or designer may have a number of job duties that fall outside the scope of a Standard Exception, even if the employee does not install or place furnishings.

Further, an employer that is in the business of providing design and decorating services on a fee basis may also engage in a wide range of duties and activities depending on how the specific business operates. Again, a classification assignment, including the assignment of some or all employees to a

Standard Exception classification, should be based on the nature of the business and the duties of the employees, not the use of titles such as “decorators or designers.”

The above positions or employers should not be directed to a Standard Exception classification. Rather, decorators and designers should be included in Classification 9529(2) unless the operations specifically meet the criteria for a Standard Exception, as is the procedure for most classifications.

Finding and Recommendation:

The footnote directing the assignment of Classification 8742 to certain interior decorators or designers is not always consistent with the Standard Exceptions Rule and should be removed.

Classification 9033, *Housing Authorities*

Classification 9033 contains a footnote stating that “Employees engaged exclusively in determining the eligibility of properties owned and operated by separate parties for rental subsidies shall be classified as 8742, *Salespersons – Outside*, subject to the Standard Exceptions rule. See Section III, Rule 4, *Standard Exceptions*.” However, determining the eligibility of properties owned and operated by separate parties for rental subsidies requires an inspection of the property, and this duty generally falls outside the scope of the Standard Exceptions Rule.

Classification 9033 is part of the *Municipal, State or Other Public Agencies* Industry Group. This Industry Group includes Classification 9410, *Municipal, State or Other Public Agency Employees – not engaged in manual labor, or direct supervision of construction or erection work – N.O.C.*, which applies to municipal employees, including but not limited to building inspectors.

Finding and Recommendations:

The footnote directing the assignment of Classification 8742 to employees engaged in determining the eligibility of properties for rental subsidies is not consistent with the Standard Exceptions Rule and should be removed. Classification 9033 should be amended to direct that the assignment of employees engaged in property inspections to determine the eligibility of properties owned and operated by separate parties for rental subsidies should be assigned to Classification 9410, *Municipal, State or Other Public Agency Employees – not engaged in manual labor, or direct supervision of construction or erection work*.

Classification 9016(1), *Amusement or Recreational Facilities – N.O.C. – all employees other than those engaged in the operation or maintenance of amusement devices, restaurants or retail stores*

Classification 9016(1) applies to horse race track operations and contains a footnote stating that “Pari-mutuel employees shall be separately classified as 8810, *Clerical Office Employees*.” Pari-mutuel employees work at race tracks and other horse race betting venues and take money, record bets and pay bet winners. These activities are substantially similar to ticket sales and collection activities at similar facilities, which are assigned to Classification 9016(1), and are more consistent with those of a ticket seller/collector at an amusement facility than those of a Standard Exception. Further, Classification 9016(1) applies to “all employees other than those engaged in the operation or maintenance of amusement devices, restaurants or retail stores” at amusement facilities. The term “all employees” requires that “division of payroll shall not be made for any employee or operations (other than the Standard Exceptions or General Exclusions)...except for an operation not incidental to and not usually associated with the enterprise described by such classification.” As pari-mutuel operations are integral to race track operations assigned to 9016(1), there should be no division of the pari-mutuel employee payroll.

Prior to 1969, pari-mutuel employees were assigned to Classification 9154, *Theaters – not motion picture – all employees other than performers and directors of performers – including managers, stage hands, box office employees or ushers*. In 1969 a group of employers appealed this assignment and asserted that since these employees work behind counters or windows selling pari-mutuel tickets, their duties are essentially clerical in nature and unlike those of theater employees, such as stagehands, ushers or motion picture operators. Although such operations could equally be compared to theater box office employees who are assigned to Classification 9154, the Committee determined that pari-mutuel employees should be assigned to Classification 8810.

In 1976, the Committee reconsidered the assignment of pari-mutuel employees to Classification 8810 as the duties of these employees did not appear to be consistent with a restriction that was in effect at that time limiting the amount of money-handling operations performed by clerical office employees. In its review of the issue, the Committee noted that the relevant payroll and loss data experience developed by the operations in question were insufficient to draw a meaningful conclusion. At the close of its review, the Committee elected to continue assigning pari-mutuel employees to Classification 8810 and to add a directive to Classification 9016(1).

When evaluating the current operations of pari-mutuel employees in California, however, staff determined that pari-mutuel employees are not typically employed directly by race tracks. Instead, pari-mutuel employees and wagering activities at race tracks are typically provided under contract by a pari-mutuel service company. Only two employers with primary operations focused on pari-mutuel betting were identified in California. One of these employers has pari-mutuel operations at off-track betting facilities, and all of its operations have been reported in Classification 9069, *Clubs – gaming – all employees – including front desk employees and restaurant or tavern employees*. Gaming operations, such as the operation of casinos and off-track betting facilities, are described by Classification 9069, and pari-mutuel clerks at off-track betting locations are assignable to Classification 9069.

Classification 9069 was established effective January 1, 1995 and was not in effect when the Committee last reviewed the operations of pari-mutuel employees in 1976. Further, the data for pari-mutuel operations reported in Classification 8810 strongly suggests that Classification 8810 significantly understates the exposure of pari-mutuel operations.

Findings and Recommendations:

The activities of pari-mutuel employees are consistent with those of ticket sellers/collectors at an amusement facility and not consistent with the Standard Exceptions Rule. In addition, Classification 9016(1) is an *all employees* classification assignable to race track operations and there is no compelling reason to carve out pari-mutuel employees from this classification. The footnote in Classification 9016(1) directing the assignment of Classification 8810 to pari-mutuel operations should be removed.

Additionally, pari-mutuel clerks at off-track betting locations, as well as pari-mutuel wagering operations provided to horse racing tracks or other horse race betting venues under contract with pari-mutuel service companies are assignable to Classification 9069. A footnote should be added to Classification 9069 to state that it applies to off-track betting facilities and employers that provide pari-mutuel wagering operations to horse racing tracks and other horse race betting venues on a contract basis.

Classification 9220(1), Cemetery Operation – all employees

Classification 9220(2), Crematory Operation – all employees

These classifications each contain a footnote stating that “Cemetery plot or mausoleum sales counselors shall be classified as 8742, *Salespersons – Outside*.” Cemetery plot or mausoleum sales often require the sales employee to walk or drive the cemetery grounds to show prospective clients available spaces and products. Classification 8742 specifies that it is assignable to employees engaged exclusively in sales, collection or public relations work *away from the premises of the employer*. Walking or driving the cemetery grounds with prospective clients is a regular job duty that exposes the employee to the operative hazards of the business and is outside the definition of an Outside Salesperson. In addition, like Classification 9016(1), Classifications 9220(1) and 9220(2) are “all employees” classifications. As sales counselor operations are integral to these classifications, there should be no division of the sales counselors’ payroll.

The classification assignments for salespersons employed by cemeteries and crematories have been reviewed several times throughout the history of these classifications. These reviews concluded that the duties of some salespersons fall outside of the scope of the Standard Exceptions definitions and are therefore described by Classification 9220, while the duties of some salespersons do fit the scope of a Standard Exception employee. For these reasons no significant changes were made to Classification 9220 as a result of these periodic reviews.

In 1996, an employer disputed the WCIRB's assignment of Classification 9220 to its cemetery sales staff engaged in assisting families in the purchase of burial plots, vaults, markers, monuments, and burial services, including showing customers burial plots at the cemetery. Although the operations were performed at the employer's own cemetery location and these employees were therefore not engaged exclusively in "sales, collection or public relations work away from the premises" as required for assignment to Classification 8742, the WCIRB agreed with the employer that its cemetery salespersons should be classified as 8742, *Salespersons – Outside*. In 2015, Classification 9220 was amended as part of the USRP enhancement project to add the footnote: *Cemetery plot or mausoleum sales counselors shall be classified as 8742, Salespersons – Outside*.

Findings and Recommendations:

The activities of cemetery plot or mausoleum sales counselors at the cemetery or mausoleum location are not consistent with the definition of an Outside Salesperson. In addition, Classifications 9220(1) and 9220(2) are *all employees* classifications, and there is no compelling reason to carve out cemetery plot or mausoleum sales counselors from these classifications. The process of selling cemetery plots, mausoleum space and related services to customers at the cemetery or mausoleum location is not a clerical or outside sales process, as it exposes the salespersons to cemetery or mausoleum work areas and operations. The footnotes in these classifications directing cemetery plot or mausoleum sales counselors to Classification 8742 should be removed, and Classifications 9220(1) and 9220(2) should be amended to specifically include cemetery plot or mausoleum sales counselors at the cemetery or mausoleum location.

Classification 7539, Electric Power Companies – all operations

Classification 7500, Gas Works – all operations

Classification 7520, Water Companies – all employees

Each of these classifications includes a footnote directing that "Employees engaged exclusively in meter reading activities (or in combination with clerical office activities) shall be classified as 8742, *Salespersons – Outside*." Meter reading does not equate to sales, collection or public relations work, as it includes exposure to environmental hazards beyond those experienced by Outside Salespersons, as well as exposure to equipment that is integral to the provision of electric, gas or water service to customers. Further, each of these classifications includes the term "all operations" or "all employees." As the reading of water, electric and gas meters at customer locations is a typical and integral operation performed by employers assigned to these classifications, there should be no division of the meter readers' payroll.

The footnotes at issue originated from a 1920 Committee decision stating that "Payroll of meter readers not exposed to operative hazard of the risk may be separately classified and rated upon receiving approval of the Bureau." Following this decision, insurers requested approval to separately classify meter readers as Outside Salespersons. Later, this classification practice was included in the footnotes stating that 8742 can only be assigned to employees engaged exclusively in meter reading activities and not exposed to operative hazards.

Findings and Recommendations:

The activities of meter readers are not consistent with the Standard Exceptions Rule. In addition, Classifications 7539, 7500 and 7520 are "all operations" or "all employees" classifications, and there is no compelling reason to carve out these operations from these classifications. The footnotes in these Classifications directing the assignment of meter readers to Classification 8742 should be removed, and these classifications should be amended to specifically include meter reading activities.

Impact Analysis

The impact of the proposed change is limited to the eight Group 4 classifications that contain a footnote that improperly directs the assignment of specific operations, duties or employments to a Standard Exception classification. The WCIRB cannot provide a statistical analysis showing the impact of reassigning these specific operations, duties or employments from Classification 8810 or 8742 to the classification otherwise assignable to these employers because this data cannot be segregated from that of other Classification 8810 and 8742 operations that may be performed by these employers. In addition,

it is unclear to what extent insurers have assigned such exposures to Classification 8810 or 8742 in cases where the operations clearly do not meet the criteria of the Standard Exceptions Rule.

Outreach

The WCIRB notified 125 industry associations of this study and encouraged feedback. The WCIRB notified associations affiliated with the classifications referenced above and provided information about how the industry may be impacted.

For the constituents of the Group 4, notifications were tailored to highlight the changes being proposed for the classifications directly impacting their industry. Additionally, as there are only two California employers with primary operations focused on pari-mutuel betting, these employers were notified directly.

Findings

Based on staff's review of the 30 classifications that include a footnote directive to Classification 8810, *Clerical Office Employees*, or Classification 8742, *Salespersons – Outside*, the WCIRB determined:

1. Twelve classifications address operations, duties or employments that are compatible with the Standard Exceptions definitions, and these directives properly state that the assignment of these operations to a Standard Exception classification is subject to the Standard Exceptions Rule.
2. Four classifications address duties or employments that are compatible with the Standard Exceptions definitions but do not state that the assignment of these operations to a Standard Exception classification is subject to the Standard Exceptions Rule, nor do they cite the rule.
3. Six classifications provide generic instructions regarding the assignment of Classification 8810 or 8742 that are unnecessary as they are duplicative of general classification procedures and not unique to the subject classification.
4. Eight classifications describe operations or duties that often fall outside of the scope of the Standard Exceptions definitions and may be unique to the subject classification.

Recommendations

Based on the findings, the WCIRB recommends the following:

1. Retain the existing footnotes to the twelve classifications that (1) provide appropriate direction regarding how the subject operations should be classified, (2) properly state that the assignment of these operations to a Standard Exception classification is subject to the Standard Exceptions Rule and (3) cite the rule.
2. Amend the footnotes to the four classifications that, while providing appropriate direction, do not state that the assignment of these operations to a Standard Exception classification is subject to the Standard Exceptions Rule and do not cite the rule.
3. Delete the footnote directives for the six classifications that assign Classification 8810 or 8742 to generic operations or job duties that are duplicative of general classification procedures.
4. Delete the footnote directives for the eight classifications that assign Classification 8810 or 8742 to operations that are not compatible with the Standard Exceptions definitions and amend the classifications where applicable to provide clarity regarding how these operations should be classified.

Recommendation

Amend Classification 5606, *Contractors – construction or erection – executive level supervisors*, to amend the footnote assigning employees whose non-clerical duties are confined to visiting job sites for pre-construction estimating to Classification 8742, *Salespersons – Outside*, to indicate that the assignment is subject to the rules set forth in Section III, Rule 4, *Standard Exceptions*.

PROPOSED

CONTRACTORS – construction or erection – executive level supervisors – no direct supervision – division of a single employee’s payroll with any other classification is not permitted **5606**

This classification may be assigned only in connection with the construction or erection classifications listed in Appendix I, *Construction and Erection Classifications*.

This classification applies to executive level supervisors of construction operations wherein the employer develops payroll in one or more construction or erection classification(s) provided not less than two levels of supervision, as defined in Section IV, Rule 2d, *Executive Level Supervisors*, are retained between the executive level supervisor and the workers performing actual construction operations.

This classification also includes management level employees, such as safety managers, project managers and engineers, who do not supervise construction operations but whose duties include walking through a construction site during the construction phase, provided the employer retains two levels of supervision over the construction crew(s) or where all operations have been subcontracted to licensed subcontractors. Otherwise, such employees are miscellaneous employees and shall be classified in accordance with Section IV, Rule 2c, *Miscellaneous Employees (Construction or Erection)*.

This classification also applies to executive level supervisors when all construction operations are subcontracted to licensed contractors and no payroll is developed under any construction classification. In such instances, executive level supervisors exercise control exclusively through licensed subcontractors.

On jobs where all construction operations are subcontracted to licensed subcontractors, Classification 5610, *Contractors – construction or erection – all construction subcontracted*, applies to all other employees, including but not limited to job site cleaning and debris removal and post-construction warranty repair operations.

Classification 5606 does not apply to employees whose job site duties are limited to estimating, outside sales or public relations. Employees whose non-clerical duties are confined to visiting job sites for the purpose of pre-construction estimating, or for meeting with clients or other project representatives, are classified as 8742, *Salespersons – Outside*, provided they have no supervisory responsibilities over construction operations, and they do not walk through job sites for purposes such as assessing construction progress, evaluating quality or determining compliance with safety standards, and their activities do not exceed those of Standard Exception Employees. See Section III, Rule 4, *Standard Exceptions*.

Fee-based construction management companies that do not engage in or perform supervision over construction operations, but serve as an intermediary between the general contractor and project owner or otherwise provide expertise regarding a construction project, shall be classified as 8601(1), *Engineers – consulting*.

Also see Section IV, Rule 2, *Construction or Erection Work*.

* * * * *

Recommendation

Amend Classification 9549, *Advertising Companies*, to amend the footnote assigning the display of hand-held advertisement signs and walking billboards (human sign holders) to Classification 8742, *Salespersons – Outside*, to indicate that the assignment of 8742 is subject to the rules set forth in Section III, Rule 4, *Standard Exceptions*.

PROPOSED

ADVERTISING COMPANIES – outdoor – selling space for advertising purposes – including shop, yard or storage operations; the erection, painting, repair and maintenance, or removal of signs; bill posting; and sign painting or lettering in or upon buildings or structures **9549**

This classification includes the production of signs, banners and related products by advertising companies and the operation of mobile billboard trucks (mobile advertising signs).

The application of painted or adhesive lettering or graphics onto surfaces on a fee basis or onto customer vehicles by employers engaged in sign painting or lettering shall be classified as 9507, *Sign Painting or Lettering and Quick Sign Shops*.

The display of hand-held advertisement signs and walking billboards (human sign holders) at locations, including but not limited to sidewalks and street corners shall be classified as 8742, *Salespersons – Outside*, subject to the Standard Exceptions rule. See Section III, Rule 4, *Standard Exceptions*.

* * * * *

Recommendation

Amend Classification 9182, *Athletic Teams or Athletic Facilities – all employees other than players, umpires, referees and game officials*, to amend the footnote assigning athletic scouts to Classification 8742, *Salespersons – Outside*, to indicate that the assignment of 8742 is subject to the rules set forth in Section III, Rule 4, *Standard Exceptions*.

PROPOSED

ATHLETIC TEAMS OR ATHLETIC FACILITIES – all employees other than players, umpires, referees and game officials **9182**

This classification applies to employees of athletic teams or parks who are engaged in the care of teams or the care, operation and maintenance of grounds and facilities, including but not limited to coaches and assistant coaches, non-playing managers, trainers, equipment managers, bat and ball retrievers, mascots, dancers, locker room attendants, public address announcers, scorekeepers, timekeepers, ushers, ticket sellers or collectors, parking lot attendants, security staff, and facility and grounds maintenance employees. This classification also applies to employees of youth or recreational athletic teams or facilities.

Athletic scouts shall be classified as 8742, *Salespersons – Outside*, subject to the Standard Exceptions rule. See Section III, Rule 4, *Standard Exceptions*.

The operation of athletic facilities during non-sporting events, including but not limited to concerts and exhibitions shall be classified as 9016(1), *Amusement or Recreational Facilities – N.O.C. – all employees other than those engaged in the operation or maintenance of amusement devices, restaurants or retail stores.*

~~Radio or television broadcasting shall be separately classified as 7610, *Radio, Television or Commercial Broadcasting Stations.*~~

Players, playing managers, and umpires, referees and game officials who monitor play, shall be classified as 9181, *Athletic Teams or Athletic Facilities – players, umpires, referees and game officials.*

Radio or television broadcasting shall be separately classified as 7610, *Radio, Television or Commercial Broadcasting Stations.*

Also refer to companion Classification 9181, *Athletic Teams or Athletic Facilities – players, umpires, referees and game officials.*

If an employee who performs duties described by Classification 9182 also performs duties described by Classification 9181, the payroll of that employee may be divided between Classifications 9181 and 9182, provided the employer maintains accurate records supported by time cards or time book entries that show such division. See Part 3, Section V, Rule 3, *Division of Single Employee's Payroll.*

Restaurants, retail stores and vendors shall be separately classified.

* * * * *

Recommendation

Amend Classification 8720(1), *Inspection for Insurance, Safety or Valuation Purposes*, to amend the footnotes assigning property appraisers and insurance claims or insurance fraud investigation companies that exclusively perform investigations that do not require surveillance of persons without their knowledge to Classification 8742, *Salespersons – Outside*, or Classification 8810, *Clerical Office Employees*, to indicate that the assignment of 8742 or 8810 is subject to the rules set forth in Section III, Rule 4, *Standard Exceptions*.

PROPOSED

INSPECTION FOR INSURANCE, SAFETY OR VALUATION PURPOSES – N.O.C. – including 8720(1) Outside Salespersons

This classification applies to employers that perform inspections for insurance, safety or valuation purposes on a fee basis, including but not limited to boiler inspections, electric meter inspection and testing, backflow valve inspection and testing, energy efficiency inspections, fire protection and safety inspections, log scaling and agricultural products inspection. This classification also applies to monitoring the flow of fluids on oil leases or along pipelines on a fee basis.

This classification also applies to insurance claims or insurance fraud investigations performed on a fee basis that involve surveillance of persons without their knowledge.

Insurance claims or insurance fraud investigation companies that exclusively perform investigations that do not require surveillance of persons without their knowledge shall be classified as

8742, *Salespersons – Outside*, or 8810, *Clerical Office Employees*, subject to the Standard Exceptions rule. See Section III, Rule 4, *Standard Exceptions*. Insurance claims investigations performed by insurance companies shall be classified as 8822, *Insurance Companies*.

Investigation operations for other than insurance claims or insurance fraud shall be classified as 7721(1), *Detective or Private Investigative Agencies*.

When performed in connection with an employer's own operations, other than construction or erection, the operating crew of Unmanned Aircraft Systems (aerial drones) with an aircraft system and payload total combined weight of less than 55 pounds shall be classified in accordance with Section III, Rule 5, *General Inclusions*.

Property appraisal (or property appraisal in combination with clerical activities) on a fee basis shall be classified as 8742, *Salespersons – Outside*, subject to the Standard Exceptions rule. See Section III, Rule 4, *Standard Exceptions*.

The weighing, grading, inspecting or sampling of merchandise at docks, railway stations or warehouses on a fee basis shall be classified as 8720(3), *Weighers, Samplers or Inspectors of Merchandise on Docks or at Railway Stations or Warehouses*.

The fee inspection of boats, ships or marine vessels for safety or to determine seaworthiness or the fee inspection or surveying of cargo that may have been damaged in marine transit shall be classified as 7248, *Marine Appraisers or Surveyors*.

The provision of legal support services on a fee basis, including but not limited to process serving of summons, subpoenas and complaints; filing court documents; or reproducing documents shall be classified as 8821, *Law Firm Support Services*.

* * * * *

Recommendation

Amend Classification 4299(1), *Printing Operation – all other employees*, which is part of the *Printing, Publishing and Duplicating* Industry Group, to remove the footnote assigning sales, collection or public relations work to Classification 8742, *Salespersons – Outside*, as it is duplicative of general classification procedures and not unique to this classification.

PROPOSED

PRINTING, PUBLISHING AND DUPLICATING

PRINTING OPERATION – all other employees – including counterpersons and drivers and their helpers – N.O.C. 4299(1)

This classification applies to employers engaged in commercial offset printing using methods, including but not limited to lithography, flexography, rotogravure, hot stamp or letterpress to produce printed matter such as business forms, stationery, greeting cards, labels, bumper stickers, bar codes, playing cards, bank checks, books and magazines. This classification includes incidental bindery and die cutting activities in support of the printing operations.

This classification does not apply when printing operations are performed by an employer in connection with its own operations. Such operations shall be assigned to the applicable classification of the employer.

~~Employees engaged in sales, collection or public relations work in support of commercial printing operations shall be separately classified as 8742, Salespersons – Outside, subject to the Standard Exceptions rule. See Section III, Rule 4, Standard Exceptions.~~

Locations at which job printing is exclusively performed with sheet-fed offset printing presses on paper not exceeding 18" x 24" shall be classified as 8019(1), *Printing – quick printing*.

Publishing or printing of newspapers, tabloids or advertising newspapers or newspaper inserts shall be classified as 4304, *Newspaper Publishing or Printing – all other employees*, or 8818, *Newspaper Publishing or Printing – editing, designing, proofreading and photographic composing*.

Screen printing shall be classified as 4295(1), *Printing Operation – screen printing – all other employees*, or 8846(1), *Printing Operation – screen printing – editing, designing, proofreading and photographic composing*.

Document duplication or photocopying by use of equipment, including but not limited to electrostatic copiers, scanners, and ink jet and laser printers shall be classified as 8019(2), *Document Duplication or Photocopying Service*.

Employers engaged in the printing of signs, banners and related commercial advertising products shall be classified as 9507, *Sign Painting or Lettering and Quick Sign Shops*.

Also refer to companion Classification 8813(1), *Printing Operation – editing, designing, proofreading and photographic composing*.

* * * * *

Recommendation

Amend Classification 8813(1), *Printing Operation – editing, designing, proofreading and photographic composing*, which is part of *Printing, Publishing and Duplicating* Industry Group, to remove the footnote assigning sales, collection or public relations work to Classification 8742, *Salespersons – Outside*, as it is duplicative of general classification procedures and not unique to this classification.

PROPOSED

PRINTING, PUBLISHING AND DUPLICATING

PRINTING OPERATION – editing, designing, proofreading and photographic composing – including Clerical Office Employees 8813(1)

This classification includes pre-press activities and clerical office employees of employers engaged in commercial off-set printing. Pre-press activities include but are not limited to editing, designing, proofreading and photographic composition, including negative stripping and plate making.

~~Employees engaged in sales, collection or public relations work in support of printing operations shall be separately classified as 8742, Salespersons – Outside, subject to the Standard Exceptions rule. See Part 3, Section III, Rule 4, Standard Exceptions.~~

Also refer to companion Classification 4299(1), *Printing Operation – all other employees*.

* * * * *

Recommendation

Amend Classification 4295(1), *Printing Operation – screen printing – all other employees*, which is part of the *Printing, Publishing and Duplicating* Industry Group, to remove the footnote assigning sales, collection or public relations work to Classification 8742, *Salespersons – Outside*, as it is duplicative of general classification procedures and not unique to this classification.

PROPOSED

PRINTING, PUBLISHING AND DUPLICATING

PRINTING OPERATION – screen printing – all other employees

4295(1)

This classification applies to fee-based screen printing of a variety of items, including but not limited to clothing, banners, wallpaper, business cards, plastic, glass and metal containers and various parts received from customers. This classification also applies to pad printing.

Commercial printing operations shall be classified as 4299(1), *Printing Operation – all other employees*, 8813(1), *Printing Operation – editing, designing, proofreading and photographic composing*, or 8019(1), *Printing – quick printing*.

~~Employees engaged in sales, collection or public relations work in support of printing operations shall be separately classified as 8742, *Salespersons – Outside*, subject to the Standard Exceptions rule. See Part 3, Section III, Rule 4, *Standard Exceptions*.~~

Also refer to companion Classification 8846(1), *Printing Operation – screen printing – editing, designing, proofreading and photographic composing*.

* * * * *

Recommendation

Amend Classification 8846(1), *Printing Operation – screen printing – editing, designing, proofreading and photographic composing*, which is part of the *Printing, Publishing and Duplicating* Industry Group, to remove the footnote assigning sales, collection or public relations work to Classification 8742, *Salespersons – Outside*, as it is duplicative of general classification procedures and not unique to this classification.

PROPOSED

PRINTING, PUBLISHING AND DUPLICATING

PRINTING OPERATION – screen printing – editing, designing, proofreading and photographic composing – including Clerical Office Employees

8846(1)

This classification applies to pre-press activities and clerical office employees of employers engaged in fee-based screen printing. Pre-press activities include but are not limited to the design and development of artwork and the preparation of screens. This classification also includes the post-printing cleaning of screens.

~~Employees engaged in sales, collection or public relations work in support of printing operations shall be separately classified as 8742, Salespersons – Outside, subject to the Standard Exceptions rule. See Part 3, Section III, Rule 4, Standard Exceptions.~~

Also refer to companion Classification 4295(1), *Printing Operation – screen printing – all other employees*.

* * * * *

Recommendation

Amend Classification 4295(2), *Screen Printed Merchandise Dealers*, which is part of the *Printing, Publishing and Duplicating* Industry Group, to remove the footnote assigning sales, collection or public relations work to Classification 8742, *Salespersons – Outside*, as it is duplicative of general classification procedures and not unique to this classification.

PROPOSED

PRINTING, PUBLISHING AND DUPLICATING

SCREEN PRINTED MERCHANDISE DEALERS – all other employees

4295(2)

This classification applies to the screen printing or pad printing of merchandise, including but not limited to clothing, advertising novelties, balloons and souvenirs, where not less than 75% of gross receipts are developed through the sale of items printed by the employer.

Retail store operations shall be separately classified.

~~Employees engaged in sales, collection or public relations work in support of printing operations shall be separately classified as 8742, Salespersons – Outside, subject to the Standard Exceptions rule. See Part 3, Section III, Rule 4, Standard Exceptions.~~

Also refer to companion Classification 8846(2), *Screen Printed Merchandise Dealers – editing, designing, proofreading and photographic composing*.

* * * * *

Recommendation

Amend Classification 8755, *Labor Unions*, to remove the footnote assigning clerical office employees to Classification 8810, *Clerical Office Employees*, as it is duplicative of general classification procedures and not unique to this classification.

PROPOSED

LABOR UNIONS – employees engaged outside of office – including Outside Salespersons

8755

This classification applies to labor union employees who represent various groups of workers and are engaged in activities away from the office, including but not limited to handling grievances, performing job evaluations, collecting delinquent payments, checking work conditions, performing contract, wage and benefit negotiations and union organizing. This classification also applies to staff attorneys who work outside of the office at least part of the time. This classification also applies to employee associations and guilds that engage in collective bargaining.

~~Employees engaged in clerical office duties exclusively within the office shall be classified as 8810, Clerical Office Employees.~~

* * * * *

Recommendation

Amend Classification 9529(2), *Decorating*, to remove the footnote assigning interior decorators and designers who do not install or place furnishings to Classification 8742, *Salespersons – Outside*, as this is not a definitive assignment and must be based on the actual duties performed by each decorator or designer.

PROPOSED

DECORATING – interior or exterior – hanging flags or bunting for conventions or celebrations 9529(2)

This classification applies to decorating the interior or exterior of buildings, streets, parking lots or malls with flags, banners, pennants or bunting in connection with conventions, celebrations, festivals or parades. This classification also applies to the installation of seasonal decorations, including but not limited to garland, trees, stars, balloons, lights, inflatable figurines and props. This classification includes the installation of similar items for advertising or commercial purposes.

The erection, removal or repair of tents away from the shop shall be classified as 9529(3), *Tent – erection, removal or repair*.

Painting or wallpaper installation shall be classified as 5474(1)/5482(1), *Painting or Wallpaper Installation*.

The installation or placement of house furnishings for other concerns on a fee basis shall be classified as 9521(1), *House Furnishings*.

~~Interior decorators or designers who operate on a fee basis and do not engage in the installation or placement of furnishings shall be classified as 8742, Salespersons – Outside, subject to the Standard Exceptions rule. See Section III, Rule 4, Standard Exceptions.~~

The installation of floor coverings, including but not limited to linoleum, vinyl, asphalt or rubber tile, carpet or rugs within buildings shall be classified as 9521(2), *Floor Covering*.

The installation of window coverings shall be classified as 9521(3), *Window Covering*.

* * * * *

Recommendation

Amend Classification 9033, *Housing Authorities*, which is part of the *Municipal, State or Other Public Agencies* Industry Group, to assign employees engaged exclusively in determining the eligibility of properties owned and operated by separate parties for rental subsidies to Classification 9410, *Municipal, State or Other Public Agency Employees*, instead of Classification 8742, *Salespersons – Outside*.

PROPOSED

MUNICIPAL, STATE OR OTHER PUBLIC AGENCIES

HOUSING AUTHORITIES – including resident or on-site managers

9033

When lodging is provided by the employer, the total remuneration shall include the market value of such lodging to the employee.

This classification applies to public agencies that provide housing or housing assistance to individuals in need. The housing authority may own and operate the housing or provide financial assistance in the form of housing vouchers, which allow clients to reside in approved housing operated by other concerns. This classification includes but is not limited to resident or on-site property managers and property maintenance or repair staff.

On-site property managers are those employees whose base of operations is at any property location that they are employed to manage. The term “resident” shall refer to any employee who resides at a property managed by the employer.

Employees engaged in property inspections to determine the eligibility of properties owned and operated by separate parties for rental subsidies shall be separately classified as 9410, *Municipal, State or Other Public Agency Employees* – not engaged in manual labor, or direct supervision of construction or erection work.

The preparation or serving of hot foods shall be separately classified as 9079(1), *Restaurants or Taverns*.

Day care centers operated by housing authorities shall be separately classified as 9059, *Day Care Centers*.

~~Employees engaged exclusively in determining the eligibility of properties owned and operated by separate parties for rental subsidies shall be classified as 8742, *Salespersons – Outside*, subject to the Standard Exceptions rule. See Section III, Rule 4, *Standard Exceptions*.~~

New construction, alteration or demolition work shall be separately classified.

* * * * *

Recommendation

Amend Classification 9410, *Municipal, State or Other Public Agency Employees – not engaged in manual labor, or direct supervision of construction or erection work*, which is part of the *Municipal, State or Other Public Agencies* Industry Group, to include employees engaged in determining the eligibility of properties owned and operated by separate parties for rental subsidies.

PROPOSED

MUNICIPAL, STATE OR OTHER PUBLIC AGENCIES

MUNICIPAL, STATE OR OTHER PUBLIC AGENCY EMPLOYEES – not engaged in manual labor, or direct supervision of construction or erection work – N.O.C. 9410

This classification includes mayors, city council members, elected officials, judges, hearing officers, district attorneys, courthouse clerks and public records clerks, employees engaged in laboratory work, health inspectors, building inspectors, engineers not engaged in actual construction or operation, meter readers other than water meter readers and similar occupations.

This classification includes housing authority employees engaged in determining the eligibility of properties owned and operated by separate parties for rental subsidies.

This classification also includes recreation and park department operations that are performed by recreation leaders, coaches, instructors, referees, and officials; daycare/babysitting; activity supervisors; and similar operations that do not involve manual labor.

Also refer to companion Classification 9420, *Municipal, State or Other Public Agency Employees – all other employees*.

* * * * *

Recommendation

Amend Classification 9016(1), *Amusement or Recreational Facilities – N.O.C. – all employees other than those engaged in the operation or maintenance of amusement devices, restaurants or retail stores*, to remove the footnote assigning pari-mutuel employees to Classification 8810, *Clerical Office Employees*, as pari-mutuel employees working at 9016(1) operations are assignable to 9016(1) and to clarify its intended application.

PROPOSED

AMUSEMENT OR RECREATIONAL FACILITIES – N.O.C. – all employees other than those engaged in the operation or maintenance of amusement devices, restaurants or retail stores 9016(1)

This classification applies to the operation of amusement or recreational facilities, including but not limited to amusement parks, ~~zoos~~, water parks, miniature golf courses, batting cages, bumper car facilities, archery ranges, water excursions/tours, laser tag, airsoft or paintball facilities, ~~and~~ Nordic (cross-country) ski facilities and zoos, including veterinarians employed by zoos.

This classification also applies to the operation of golf driving ranges that are not operated by golf courses or country clubs.

This classification also applies to automobile or horse race track operations by employers that are not public agencies. ~~Pari-mutuel employees shall be separately classified as 8810, Clerical Office Employees.~~

This classification also applies to the operation of athletic or sports venues, including ballparks and stadiums, during non-sporting activities, including but not limited to concerts and exhibitions.

~~Restaurants or retail stores shall be separately classified.~~

Boat marinas or boat rental facilities shall be classified as 9016(4), *Boat Marina and Boat Rental Operation*.

Golf courses or country clubs shall be classified as 9060, *Clubs – country or golf*.

Traveling carnivals or circuses shall be classified as 9185, *Carnivals or Circuses*.

The operation of events, including but not limited to farmers' markets, flea markets, street fairs, swap meets, art or antique festivals, trade shows (public or private), fun runs, foot races, cycling events, marathons, triathlons and athletic charity events shall be classified as 9095, *Event Market, Festival or Trade Show Operation*.

The operation of race tracks by public agencies shall be classified as 9410/9420, *Municipal, State or Other Public Agency Employees*.

Bowling centers shall be classified as 9092(1), *Bowling Centers*.

Billiard halls shall be classified as 9092(2), *Billiard Halls*.

Skating rinks or skate parks shall be classified as 9092(3), *Skating Centers*.

Also refer to companion Classification 9180(1), *Amusement or Recreational Facilities – N.O.C. – operation or maintenance of amusement devices*.

If an employee who performs duties described by Classification 9016(1) also performs duties described by Classification 9180(1), the payroll of that employee may be divided between Classifications 9016(1) and 9180(1), provided the employer maintains accurate records supported by time cards or time book entries that show such division. See Section V, Rule 3, *Division of Single Employee's Payroll*.

Restaurants or retail stores shall be separately classified.

* * * * *

Recommendation

Amend Classification 9069, *Clubs – gaming*, to include a footnote directing that this classification applies to off-track betting facilities and includes the provision of pari-mutuel wagering operations to horse racing tracks and other horse race betting venues on a contract basis.

PROPOSED

CLUBS – gaming – all employees – including front desk employees and restaurant or tavern employees **9069**

This classification applies to the operation of casinos and gaming houses, including but not limited to card rooms, off-track betting facilities and bingo parlors.

This classification also applies to the provision of gaming tables, equipment, dealers and operators for private events.

This classification includes the provision of pari-mutuel wagering operations to horse racing tracks or other horse race betting venues on a contract basis.

* * * * *

Recommendation

Amend Classification 9220(1), *Cemetery Operation*, to include cemetery plot or mausoleum sales counselors at the cemetery location.

PROPOSED

CEMETERY OPERATION – all employees

9220(1)

This classification applies to the operation and maintenance of cemeteries or mausoleums, including cemetery plot or mausoleum sales counselors at the cemetery location. This classification also applies to the operation and maintenance of pet cemeteries.

~~Cemetery plot or mausoleum sales counselors shall be classified as 8742, Salespersons—Outside.~~

Crematory operations shall be separately classified as 9220(2), *Crematory Operation*.

The operation of funeral homes and mortuaries shall be classified as 9620, *Funeral Directors*.

The manufacture of stone cemetery monuments shall be classified as 1803, *Stone Cutting or Fabrication*.

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Recommendation

Amend Classification 9220(2), *Crematory Operation*, to include cemetery plot or mausoleum sales counselors at the crematory location.

PROPOSED

CREMATORY OPERATION – all employees

9220(2)

This classification applies to the operation and maintenance of crematories, including cemetery plot or mausoleum sales counselors at the crematory location.

~~Cemetery plot or mausoleum sales counselors shall be classified as 8742, Salespersons—Outside.~~

Cemetery operations shall be separately classified as 9220(1), *Cemetery Operation*.

The operation of funeral homes and mortuaries shall be classified as 9620, *Funeral Directors*.

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Recommendation

Amend Classification 7539, *Electric Power Companies*, to include meter reading activities.

PROPOSED

ELECTRIC POWER COMPANIES – all operations – including construction or extension of lines 7539

This classification applies to publicly or privately operated electric power companies that supply electrical power to customers. This classification includes the operation of all types of power generation plants or systems, including but not limited to hydro, solar, wind, geothermal, bio-mass and landfill gas power plants. This classification also includes the construction, operation, maintenance or repair of substations or transmission lines and the reading, installation or repair of electric meters.

The erection of aerial power lines by separate concerns shall be classified as 7538, *Electric Power Line Construction*.

The construction of buildings, dams or reservoirs shall be separately classified.

~~Employees engaged exclusively in meter reading activities (or in combination with clerical office activities) shall be classified as 8742, Salespersons – Outside.~~

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Recommendation

Amend Classification 7500, *Gas Works*, to include meter reading activities.

PROPOSED

GAS WORKS – all operations – including construction or extension of lines 7500

This classification applies to the operations of publicly or privately operated natural gas utility companies. The operations include but are not limited to the operation and maintenance of gas processing and storage plants; construction or repair of gas lines and valves; installation, repair and replacement of flow regulation and metering devices; meter reading activities; and the sale and delivery of containerized propane or liquefied petroleum gas.

~~Employees engaged exclusively in meter reading activities (or in combination with clerical office activities) shall be classified as 8742, Salespersons – Outside.~~

The sale and delivery of containerized propane or liquefied petroleum gas by separate concerns shall be classified as 8350, *Gasoline or Oil Dealers*.

The operation of gas pipelines on a fee basis shall be classified as 7515, *Oil or Gas Pipeline Operation*.

The construction of gas pipelines between natural gas producing fields and points of connection with local distributing systems by separate concerns shall be classified as 6233, *Oil or Gas Pipeline Construction*.

The construction of gas mains along streets or roads by separate concerns shall be classified as 6315(2)/6316(2), *Gas Mains or Connections Construction*.

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Recommendation

Amend Classification 7520, *Water Companies*, to include meter reading activities.

PROPOSED

WATER COMPANIES – all employees – including construction or extension of lines

7520

This classification applies to the operations of publicly or privately operated water companies that supply potable water to communities. This classification includes but is not limited to the construction, maintenance or repair of water mains and lateral lines, the treatment of water, the operation and maintenance of pumping stations and the reading, installation or repair of water meters.

The construction of aqueducts, buildings, dams or reservoirs shall be separately classified.

~~Employees engaged exclusively in meter reading activities (or in combination with clerical office activities) shall be classified as 8742, Salespersons – Outside.~~

The construction of cross-country water pipelines by separate concerns shall be classified as 6361(2), *Cross-Country Water Pipeline Construction*.

The construction of water mains along streets or roads by separate concerns shall be classified as 6315(1)/6316(1), *Water Mains or Connections Construction*.

The delivery and spraying of water at construction sites by water truck service companies shall be classified as 7272, *Water Truck Service Companies*.

The operation of hydroelectric power plants shall be classified as 7539, *Electric Power Companies*.

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Item III-E

Proposed Non-Substantive Amendments

California Workers' Compensation Uniform Statistical Reporting Plan—1995 (USRP)

Part 3 of the USRP contains the standard classification rules and phraseology and footnotes for the standard classifications. The WCIRB is proposing changes to the following classifications for clarity and consistency:

- 8018, *Stores – wholesale – N.O.C.*

The WCIRB is also proposing changes to the following rule for clarity:

- Part 3, *Standard Classification System*, Section IV, *Special Industry Classification Procedures*, Rule 2d, *Executive Level Supervisors*

Part 4 of the USRP contains the rules for reporting unit statistical report data to the WCIRB. The WCIRB is proposing changes to the following rules for clarity and to update the citation to the federal Terrorism Risk Insurance Program:

- Part 4, *Unit Statistical Reporting Requirements*, Section I, *General Instructions*, Rule 1, *Scope*
- Part 4, Section II, *Definitions*, Rule 12, *Final Premium(s)*

California Workers' Compensation Experience Rating Plan—1995 (ERP)

The ERP governs the experience rating procedure to be followed in connection with California workers' compensation insurance. The WCIRB is proposing changes to the following rule to update the citation to the federal Terrorism Risk Insurance Program:

- Section II, *Definitions*, Rule 2, *Base Premium*

Recommendation

Amend Part 3, *Standard Classification System*, Section IV, *Special Industry Classification Procedures*, Rule 2, *Construction and Erection Work*, Subrule d, *Executive Level Supervisors*, for clarity.

PROPOSED

Section IV – Special Industry Classification Procedures

2. Construction or Erection Work

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d. Executive Level Supervisors

Executive level supervisors oversee the insured's construction operations through second level (or higher) supervisors. In addition, on job sites where the insured subcontracts all operations to licensed subcontractors, executive level supervisors may oversee operations through subcontractors. Notwithstanding any other provisions contained herein, it is not permissible to divide a single employee's payroll, within a single policy period, between Classification 5606, *Contractors – construction or erection – executive level supervisors*, and any other classification.

Executive level supervisors oversee construction operations wherein the insured develops payroll in one or more construction or erection classifications shall be eligible for Classification 5606 provided not less than two levels of supervision, as defined below, are retained between the executive level supervisor and the workers performing the actual construction operations.

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Recommendation

Amend Classification 8018, *Stores – wholesale*, which is part of the *Stores Industry Group*, for clarity.

PROPOSED

STORES

STORES – wholesale – N.O.C.

8018

This classification applies to wholesale stores engaged in the sale of merchandise not more specifically described by another store classification, including but not limited to electrical or electronic components, industrial parts, janitorial supplies, restaurant supplies, appliances, cosmetics or beauty supplies, pharmaceuticals, toys, vitamins or food supplements, packaging materials and specialty foodstuffs.

This classification also applies to:

- ___ the provision of in-office coffee and tea supplies to customers on a fee basis;
- ___ the sale and servicing of fire extinguishers;
- ___ packaging and fulfillment services on a fee basis;
- ___ purchase and resale of prepackaged meats when no handling of unpackaged fresh meat and no processing, including but not limited to cutting, trimming, deboning, grinding or repackaging, is performed; and
- ___ egg processing (candling) and packaging (not in connection with farms).

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Recommendation

Amend Part 4, *Unit Statistical Reporting Requirements*, Section I, *General Instructions*, Rule 1, *Scope*, for clarity.

PROPOSED

Part 4 – Unit Statistical Reporting Requirements

Section I – General Instructions

1. Scope

Insurers shall provide unit statistical report data for every workers' compensation insurance policy extending coverage under the workers' compensation laws of California, including California coverage by endorsement on a policy primarily covering another state, which must be reported by electronic submission to the WCIRB in accordance with the provisions of this Plan and the reporting requirements for California described in the Workers Compensation Insurance Organizations (WCIO) Workers Compensation Statistical Reporting Specifications (WCSTAT). Each electronic submission must contain an Electronic Transmittal Record as provided in the WCIO Electronic Transmittal Record Specifications (ETR). On multi-state policies, data pertaining only to California coverage shall be submitted.

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Recommendation

Amend Part 4, Section II, *Definitions*, Rule 12, *Final Premium(s)*, to update the citation to the federal Terrorism Risk Insurance Program.

PROPOSED

Section II – Definitions

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12. Final Premium(s)

Reported in the "Standard Premium Total" field on the unit statistical report, this is the total premium charged to the policyholder, EXCEPT that it does not include the following:

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- f. Premium charges arising from the Terrorism Risk Insurance Program established by the Terrorism Risk Insurance Act of 2002, as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007 and 2015 and any amendments thereof,
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The following hypothetical examples illustrate how final premiums on two large policies are to be determined (assuming, for simplicity, that retrospective rating adjustments and policyholder dividends do not apply to these two policies, but a charge arising from the Terrorism Risk Insurance Act of 2002 as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2015 and any amendments thereof, does apply):

		Example One	Example Two
(1)	Subject Premium (Based on exposure and insurer's rates)	\$5,000	\$200,000
(2)	Experience Rating Credit	—	20,000
(3)	Experience Rating Debit	—	—
(4)	Deductible Credit	—	50,000
(5)	Premium Discount	—	10,000
(6)	Expense Constant	50	—
(7)	Other Credit Adjustments*	100	2,000
(8)	Other Debit Adjustments**	75	3,000
(9)	Charge for <u>Terrorism Risk Insurance Act of 2002 as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2015 and any amendments thereof</u>	40	1,500
(10)	Actual Premium Charged [(1) + (3) + (6) + (8) + (9)] – [(2) + (4) + (5) + (7)]	5,065	122,500
(11)	Final Premium to be Reported [(1) + (3) + (6) + (8)] – [(2) + (5) + (7)], or simply (10) + (4) – (9)	\$5,025	\$171,000

* schedule rating credits, merit rating credits, Insolvent Insurer Rating Adjustment Factor credits, etc., if applicable.

** schedule rating debits, surcharge for waiver of subrogation, surcharge for Coverage B increased limits, surcharge for policyholder audits authorized by Insurance Code Section 11665, additional premium estimated pursuant to Insurance Code Section 11760.1, Insolvent Insurer Rating Adjustment Factor debits, etc., if applicable.

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Recommendation

Amend the *California Workers' Compensation Experience Rating Plan—1995*, Section II, *Definitions*, Rule 2, *Base Premium*, to update the citation to the federal Terrorism Risk Insurance Program.

PROPOSED

Section II – Definitions

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2. Base Premium

The amount derived from summing the application of the insurer classification rates to the payroll or other basis of exposure, excluding any premium charges arising from the Terrorism Risk Insurance Program established by the Terrorism Risk Insurance Act of 2002, ~~as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007 and 2015~~ and any amendments thereof.

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Item III-F

Coronavirus Disease 2019 (COVID-19)

i. Claims Reporting and Experience Rating

The Coronavirus Disease 2019 (COVID-19) pandemic has created several challenges for the California workers' compensation system, including the identification and quantification of COVID-19 claims and the treatment of COVID-19 claims for purposes of experience rating.

Identification of COVID-19 Claims

In order to facilitate quantifying the cost of workers' compensation claims attributable to the COVID-19 pandemic and determining special treatment in ratemaking and experience rating to the extent appropriate, the Workers Compensation Insurance Organizations (WCIO) have established a Nature of Injury code and Cause of Injury code as well as Catastrophe Number for purposes of reporting COVID-19 claims with accident dates on or after December 1, 2019. Staff, therefore, is proposing amendments to the Nature of Injury codes and Cause of Injury codes included in Appendix III of the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* (USRP) to adopt these codes for reporting COVID-19 claims in California. In addition, staff is proposing amendments to Part 4, *Unit Statistical Reporting Requirements*, Section V, *Loss Information*, Rule B, *Loss Data Elements*, Subrule 4, *Catastrophe Number*, of the USRP to direct that COVID-19 claims reported on unit statistical report data with a required date of reporting on or after August 1, 2020 be reported with Catastrophe Number 12.

Exclusion of COVID-19 Claims from Experience Rating

Workers' compensation is a no-fault system. As such, injured workers are compensated for the financial implications of workplace injuries without consideration of fault. There is no attempt in the *California Workers' Compensation Experience Rating Plan—1995* (ERP) to determine whether a particular claim was the fault of the insured and, therefore, all compensable claims are reflected in experience rating. However, California's workers' compensation experience rating system is a merit rating system intended to provide employers a direct financial incentive to reduce work-related accidents. Given the unprecedented nature of this pandemic and the fact that the occurrence of COVID-19 workers' compensation claims are not likely a strong predictor of future claim costs incurred by an employer, the inclusion of such claims in an experience modification calculation would not meet the intended goal of experience rating. Staff, therefore, is proposing that COVID-19 claims reported with Catastrophe Number 12 be excluded from individual employer's experience modification calculations.

Staff is also recommending the elimination of outdated rules from the USRP and ERP related to the treatment of claims arising from the commercial airline hijackings of September 11, 2001 since these rules are now obsolete.

WCIRB staff is recommending that all of the above amendments to the USRP and ERP be included in a special Regulatory Filing and apply to claims reported on unit statistical report data with a required date of reporting on or after August 1, 2020.

Recommendation

Amend the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* (USRP), Part 4, *Unit Statistical Reporting Requirements*, Section V, *Loss Information*, Rule B, *Loss Data Elements*, Subrule 4, *Catastrophe Number*, to add Catastrophe Number 12 for the reporting of COVID-19 claims and eliminate the reference to claims arising from the commercial airline hijackings of September 11, 2001 with respect to unit statistical report data with a required date of reporting on or after August 1, 2020.

PROPOSED

Section V – Loss Information

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B. Loss Data Elements

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4. Catastrophe Number

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With respect to unit statistical report data with a required date of valuation reporting on or after ~~March 1, 2002~~ August 1, 2020, report "Catastrophe Number" ~~4812~~ for all claims ~~directly arising from the commercial airline hijackings of September 11, 2001 and the resulting subsequent events with accident dates of September 11, 2001 through September 14, 2001. (This applies to both single and multiple claims.) (See the definition of "Catastrophe" as applicable to this Plan.)~~ with a diagnosis of Coronavirus disease 2019 (COVID-19) and an accident date on or after December 1, 2019.

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Recommendation

Amend the USRP, Appendix III, *Injury Description Codes*, Section B, *Nature of Injury (Positions 3-4)*, and Section C, *Cause of Injury (Positions 5-6)*, to add a Nature of Injury code and a Cause of Injury Code for COVID-19 claims with respect to unit statistical report data with a required date of reporting on or after August 1, 2020.

PROPOSED

Appendix III

Injury Description Codes

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B. Nature of Injury (Positions 3–4)

Code	Narrative Description
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•	
II. Occupational Disease or Cumulative Injury	
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•	
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83. COVID-19	<u>Coronavirus disease 2019 (COVID-19) is a respiratory disease caused by a coronavirus</u>
•	
•	
•	

C. Cause of Injury (Positions 5-6)

Code	Narrative Description
•	
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•	
X. Miscellaneous Causes	
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•	
•	
83. Pandemic	<u>A disease outbreak affecting large populations or a whole region, country, or continent</u>
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Recommendation

Amend the *California Workers' Compensation Experience Rating Plan—1995*, Section VI, *Rating Procedure*, Rule 2, *Actual Losses and Actual Primary (Ap) Losses*, to (1) specify that all claims with a diagnosis of Coronavirus disease 2019 (COVID-19) shall not be reflected in the computation of an experience modification and (2) eliminate the reference to claims arising from the Terrorism Risk Insurance Act of 2002, as amended.

PROPOSED

Section VI – Rating Procedure

2. Actual Losses and Actual Primary (Ap) Losses

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- j. ~~For a claim directly arising from certified terrorism losses, as defined by the Terrorism Risk Insurance Act of 2002 as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007 and 2015, reported with a Catastrophe Code assigned pursuant to the Uniform Statistical Reporting Plan, none of the reported incurred loss on the eClaims with a diagnosis of Coronavirus disease 2019 (COVID-19), reported with a Catastrophe Number 12 pursuant to the Uniform Statistical Reporting Plan, shall not~~ be reflected in the computation of the experience modification.

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Item III-F

Coronavirus Disease 2019 (COVID-19)

ii. Impact on Basis of Payroll

The California stay-at-home order in response to COVID-19 is having a major impact on the workers' compensation system in California. Many employers have altered employees' duties so they can be accomplished from home and other employers have continued to pay their employees even though the employees are not working.

Currently, the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* (USRP) permits the division of an employee's payroll between a Standard Exception classification and another classification only when there is a single, permanent job reassignment. As a result of the California stay-at-home order, however, many employees' job duties have changed such that they would qualify for assignment to Classification 8810 but their jobs have not been permanently reassigned and thus their payroll cannot be divided under the current rules. WCIRB staff, therefore, is proposing amendments to permit the assignment of Classification 8810, *Clerical Office Employees*, while the California stay-at-home order is in place and for thirty days thereafter, for employees whose reassigned job duties meet the definition of Clerical Office Employees and who are not assigned to a classification that includes Clerical Office Employees during the remainder of the policy period.

With respect to employees who continue to be paid while they are not performing any duties of any kind in the service of the employer, WCIRB staff is proposing amendments to the USRP to exclude such payments during the time the California stay-at-home order is in place and for thirty days thereafter. The rationale for this recommendation is that, because these employees are not engaged in any work activities, they have little to no work-related exposure. Further, unlike typical sick leave, vacation pay, bonus pay and idle time pay, this is an extraordinary payroll event that is not included within the assumptions of the current basis of payroll rules.

Finally, in order to collect data regarding the excluded payments for purposes of understanding the impact of COVID-19 on the workers' compensation system, WCIRB staff is proposing that such amounts be reported utilizing code 0012 on the Exposure Record.

WCIRB staff is recommending that these amendments to the USRP be included in a special Regulatory Filing and apply to unit statistical report data with a required date of reporting on or after November 1, 2020.

Recommendation

Amend the *California Workers' Compensation Uniform Statistical Reporting Plan—1995 (USRP)*, Part 3, *Standard Classification System*, Section III, *General Classification Procedures*, to add Rule 7, *Coronavirus Disease 2019 (COVID-19)*, to permit during an official California COVID-19 stay-at-home order, (1) the division of an employee's payroll between Classification 8810, *Clerical Office Employees*, and a non-standard exception classification when the employee's work is exclusively clerical in nature, and (2) payments made to an employee while the employee is performing no duties of any kind in service of the employer to be excluded from payroll when the payments are equal to or less than the employees regular rate of pay, for unit statistical report data with a required date of reporting on or after November 1, 2020.

PROPOSED

Section III – General Classification Procedures

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7. Coronavirus Disease 2019 (COVID-19)

Effective as of the date of a California statewide stay-at-home order and concluding thirty (30) days after the order is lifted:

- Payroll of an employee who meets the definition of a Clerical Office Employee and whose payroll for the balance of the policy period is not assignable to a standard classification that specifically includes Clerical Office Employees shall be assigned to Classification 8810, *Clerical Office Employees*.
- Payments made to an employee, including sick or family leave payments, while the employee is performing no duties of any kind in service of the employer shall be excluded from remuneration; however, the excluded amounts shall be no greater than the employee's regular rate of pay.

Employers must maintain records that document the change in duties and that segregate such payments during this time.

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Recommendation

Amend the USRP, Part 4, Section IV, *Exposure Information*, Rule 1, *Classification Code*, and Rule 4, *Exposure Amount*, to report payments excluded from remuneration pursuant to Part 3, *Standard Classification System*, Section III, *General Classification Procedures*, Rule 7, *Coronavirus Disease 2019 (COVID-19)* with respect to unit statistical report data with a required date of reporting on or after November 1, 2020.

PROPOSED

Section IV – Exposure Information

1. Classification Code

Report the appropriate 4-digit California standard classification code. Report code 0012 for payments excluded from remuneration pursuant to Part 3, *Standard Classification System*, Section III, *General Classification Procedures*, Rule 7, *Coronavirus Disease 2019 (COVID-19)*, subrule b. All records containing “Exposure Amount” must be assigned to a standard classification code developed in accordance with the provisions of this Plan or code 0012.

Also, report statistical code 9740, *Catastrophe Provisions for Terrorism*, if applicable. Other statistical codes need not be reported. (See the definition of “Statistical Code” as applicable to this Plan.)

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4. Exposure Amount

Report the total audited exposure for each standard classification code. (See the definition of “Audited Exposure” as applicable to this Plan.) Report payments excluded from remuneration pursuant to Part 3, *Standard Classification System*, Section III, *General Classification Procedures*, Rule 7, *Coronavirus Disease 2019 (COVID-19)*, subrule b. Report payroll dollars rounded to the nearest whole dollar amount. Report non-payroll exposures to the nearest tenth of a unit. Payrolls or other applicable exposure amounts reported shall be obtained in accordance with the provisions of this Plan.

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Recommendation

Amend Appendix II, *Payroll/Remuneration Table*, for consistency with other proposed changes.

PROPOSED

Appendix II

Payroll/Remuneration Table

Type of Compensation	Is Payment Included as Payroll?	Exception or Comment
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•		
•		
Commissions or Draws	Yes	
<u>Coronavirus Disease 2019 (COVID-19): Payments Made During the California Stay-At-Home Order</u>		<u>See USRP, Part 3, Section III, Rule 7</u>
“Davis-Bacon”, Davis Bacon Act		See “Prevailing Wage Laws”, “Davis Bacon Act”
•		
•		
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