

STATE OF CALIFORNIA  
**DEPARTMENT OF INSURANCE**  
300 Capitol Mall, 17<sup>th</sup> Floor  
Sacramento, California 95814

**NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING**

**JULY 1, 2020 WORKERS' COMPENSATION INSURANCE RATING RULES  
FILING**

**April 21, 2020**

**File No. REG-2020-00007**

**SUBJECT OF PROPOSED RULEMAKING**

Notice is given that a public hearing will be held in response to a filing by the Workers' Compensation Insurance Rating Bureau of California ("WCIRB"), submitted on April 20, 2020. The WCIRB proposes amendments to the Insurance Commissioner's Regulations pertaining to the Classification of Risks, Recording and Reporting of Data, Statistical Reporting and Experience Rating to be effective July 1, 2020, as follows:

- Approval of proposed amendments to the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* as proposed by the WCIRB as the Insurance Commissioner's designated statistical agent.
- Approval of proposed amendments to the *California Workers' Compensation Experience Rating Plan—1995* as proposed by the WCIRB as the Insurance Commissioner's designated statistical agent.

**HEARING**

**Public Hearing Date and Location**

A public hearing will be conducted to permit all interested persons the opportunity to present statements or arguments, verbally or in writing, with respect to the matters proposed in the WCIRB's filing, at the following date, time and place:

**May 18, 2020 – 10:00 AM**  
**California Department of Insurance**  
**TELEPHONIC PARTICIPATION ONLY**  
**Toll-Free Telephone Number: 844-767-5679**  
**Access Code: 927364**

**Participants will be given instructions on how to provide testimony once they have accessed the hearing.** The hearing will continue on the date noted above until all testimony has been submitted or until 5:00 p.m., whichever is earlier.

### **Access to Telephonic Conference Call**

This hearing will be open to the public. To make it possible for the Department to advise attendees of future rulemaking activity, as well as to aid the Department of Insurance in managing attendance, we request that you voluntarily RSVP as soon as possible, preferably by Thursday, May 14, 2020, by providing your name(s), the name of the organization you represent, and your contact information, including email address of each attendee to [brentley.yim@insurance.ca.gov](mailto:brentley.yim@insurance.ca.gov). An RSVP is not required to attend the telephonic conference and all attendees are invited to participate regardless of whether there was an RSVP.

The telephonic conference to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make specific arrangements, if necessary.

### **WRITTEN COMMENT PERIOD**

#### **Presentation of Written or Oral Comments; Contact Persons**

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at **5:00 p.m. on Monday, May 18, 2020**. Please direct all written comments to the following contact person:

Brentley Yim, Attorney  
California Department of Insurance  
1901 Harrison St., 4<sup>th</sup> Floor  
Oakland, CA 94612  
Telephone: (415) 538-4113  
[brentley.yim@insurance.ca.gov](mailto:brentley.yim@insurance.ca.gov)

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If he is unavailable, inquiries may be addressed to the following backup contact person:

Patricia Hein, Attorney  
California Department of Insurance  
1901 Harrison St., 6<sup>th</sup> Floor  
Oakland, CA 94612  
Telephone: (415) 538-4430  
[patricia.hein@insurance.ca.gov](mailto:patricia.hein@insurance.ca.gov)

Please note that under the California Public Records Act (Government Code Section 6250, et seq.), your written and oral comments, and associated contact information (e.g., your

address, phone number, e-mail, etc.) become part of the public record and can be released to the public upon request.

### **Deadline for Written Comments**

All written materials must be received by the Insurance Commissioner, addressed to the contact person at the address listed above, no later than **5:00 p.m. on Monday, May 18, 2020**. Any written materials received after that time may not be considered.

### **Comments Transmitted by E-Mail or Facsimile**

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: [brentley.yim@insurance.ca.gov](mailto:brentley.yim@insurance.ca.gov). The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Brentley Yim and sent to the following facsimile number: (415) 904-5490. **Comments sent to e-mail addresses or facsimile numbers other than those designated in this notice will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

### **PROCEEDINGS NOT SUBJECT TO ADMINISTRATIVE PROCEDURE ACT**

The regulations contained in the *California Workers' Compensation Uniform Statistical Reporting Plan—1995*, and the *California Workers' Compensation Experience Rating Plan—1995* pertain to the establishment of workers' compensation insurance rates. Government Code Section 11340.9(g) states that the Administrative Procedure Act [Chapter 3.5 of the Government Code] shall not apply to regulations that establish or fix rates, prices, or tariffs, and the Office of Administrative Law has determined that these regulations are excluded from the requirements of the Administrative Procedure Act.

This Notice and any accompanying documents are being offered by the Commissioner to obtain written public comment before the Commissioner determines whether to approve the amendments to these regulations. The Commissioner shall issue an Order regarding his determination pursuant to Insurance Code Section 11734.

### **AUTHORITY AND REFERENCE**

#### Uniform Plans and Regulations

The workers' compensation classification of risks and statistical reporting rules are set forth in Title 10, California Code of Regulations, Section 2318.6. The workers' compensation experience rating regulations are set forth in Title 10, California Code of Regulations, Section 2353.1. These regulations are promulgated by the Insurance Commissioner pursuant to the authority granted by Insurance Code Section 11734.

### **INFORMATIVE DIGEST**

Pursuant to Insurance Code Sections 11734 and 11751.5, the Insurance Commissioner has

designated the WCIRB as his statistical agent. As the designated statistical agent, the WCIRB collects insurer data and recommends revisions to the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* and the *California Workers' Compensation Experience Rating Plan—1995* for approval. Adherence to the regulations contained in the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* and the *California Workers' Compensation Experience Rating Plan—1995* is mandatory for insurers. However, Insurance Code Section 11734 provides that an insurer may develop its own classification system if it is filed with the Insurance Commissioner 30 days prior to its use and is not disapproved by the Insurance Commissioner for failure to demonstrate that the data produced by the insurer's classification system can be reported consistently with the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* or the standard classification system developed by the WCIRB and approved by the Insurance Commissioner.

The amendments to the *California Workers' Compensation Uniform Statistical Reporting Plan—1995*, and the *California Workers' Compensation Experience Rating Plan—1995* are summarized below.

**Amendments to the *California Workers' Compensation Uniform Statistical Reporting Plan—1995*, Title 10, California Code of Regulations, Section 2318.6,  
Effective July 1, 2020**

1. Amend Part 1, *General Provisions*, Section I, *Introduction*, Rule 3, *Effective Date*, to show that the effective date of the amended USRP is 12:01 AM, July 1, 2020.
2. Amend Section III, *General Classification Procedures*, to add Rule 7, *Coronavirus Disease 2019 (COVID-19)*, to permit during a statewide California COVID-19 stay-at-home order, and until sometime thereafter (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 employee's regular rate of pay.
3. Amend 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)*.
4. Amend Section V, *Loss Information*, Rule B, *Loss Data Elements*, Subrule 4, *Catastrophe Number*, to (1) add Catastrophe Number 12 for the reporting of COVID-19 claims, and (2) eliminate the reference to claims arising from the commercial airline hijackings of September 11, 2001 since these rules are now obsolete.
5. Amend Appendix II, *Payroll/Remuneration Table*, for consistency with other proposed changes.
6. Amend 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.

**Amendments to the California Workers' Compensation Experience Rating  
Plan—1995, Title 10, California Code of Regulations, Section 2318.6,  
Effective July 1, 2020**

1. Amend Section I, *General Provisions*, Rule 2, *Effective Date*, to show that the effective date of the amended Experience Rating Plan is 12:01 AM, July 1, 2020.
2. Amend Section VI, *Rating Procedure*, Rule 2, *Actual Losses and Actual Primary (Ap) Losses*, to (1) specify that all claims directly arising from 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, since these rules are now obsolete.

**CONTACT PERSON**

The name and telephone number of the agency representative and designated contact person are listed above under “WRITTEN COMMENT PERIOD.”

**AVAILABILITY STATEMENTS**

The Commissioner has prepared an Informative Digest included in this Notice that sets forth a summary and the reasons for the proposed regulations. Upon request to the contact persons above, the text of the proposed regulations shall be made available for inspection and copying.

The file for this action, which includes a copy of the proposed regulations, the WCIRB's filing, and any supplemental information, is contained in the Rulemaking File: REG-2020-00007 and is available for inspection by requesting an electronic copy or by requesting an in-person review and copy by prior appointment at 1901 Harrison Street, 4th Floor, Oakland, California 94612, between the hours of 9:00 A.M. and 5:00 P.M., Monday through Friday.

The express terms of the proposed regulations as contained in the WCIRB's filing may also be viewed or downloaded from the Regulatory Filings section of the WCIRB website: [www.wcirb.com](http://www.wcirb.com).

**INTERNET ACCESS**

Documents concerning these proposed regulations are available on the Department's website at the following link: [www.insurance.ca.gov/0250-insurers/0500-legal-info/0200-regulations/proposed-regulations.cfm](http://www.insurance.ca.gov/0250-insurers/0500-legal-info/0200-regulations/proposed-regulations.cfm).

**APPROVAL OF REGULATIONS**

Following the time period to receive written comment, the Insurance Commissioner may approve regulations substantially as described in this Notice and Informative Digest, or he may approve modified regulations or refuse to approve the regulations. Notice of the Insurance Commissioner's action will be sent to all persons who have requested notice of the Commissioner's action.