

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

**SEPTEMBER 1, 2021 WORKERS' COMPENSATION INSURANCE RATING
RULES FILING**

March 3, 2021

File No. REG-2021-00001

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 February 26, 2021. 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 September 1, 2021, 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 *Miscellaneous Regulations for the Recording and Reporting of Data—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

The WCIRB also 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 September 1, 2022, 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.

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:

April 8, 2021 – 10:00 A.M.
California Department of Insurance
TELEPHONIC PARTICIPATION ONLY
Toll-Free Telephone Number: 877-226-8152
Access Code: 1933050

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 5:00 p.m. on Tuesday, April 6th, 2021, 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. 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 Thursday, April 8, 2021**. Please direct all written comments to the following contact person:

Brentley Yim, Attorney
California Department of Insurance
1901 Harrison St., 4th Floor
Oakland, CA 94612
Telephone: (415) 538-4113

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:

Yvonne Hauscarriague, Attorney
California Department of Insurance
1901 Harrison St., 6th Floor
Oakland, CA 94612
Telephone: (415) 538-4417
yvonne.hauscarriague@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 Thursday, April 8, 2021**. 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. 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*, the *Miscellaneous Regulations for the Recording and Reporting of Data—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 miscellaneous regulations for the recording and reporting of data are set forth in Title 10, California Code of Regulations, Section 2354. 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*; the *Miscellaneous Regulations for the Recording and Reporting of Data—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*, the *Miscellaneous Regulations for the Recording and Reporting of Data—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*, the *Miscellaneous Regulations for the Recording and Reporting of Data—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 September 1, 2021**

1. Amend Part 1, *General Provisions*, Section I, *Introduction*, Rule 3, *Effective Date*, to show that the effective date of the amended Uniform Statistical Reporting Plan is 12:01 AM, September 1, 2021.
2. Amend Part 3, *Standard Classification System*, Section II, *Classification Terminology*, Rule 11, *Interchange of Labor*, for clarity.
3. Amend Part 3, Section III, *General Classification Procedures*, Rule 3, *Multiple Enterprises*, to clarify the rules and definitions applicable to operations that constitute Multiple Enterprises to facilitate consistent outcomes and better align with the objectives of the Standard Classification System.
4. Amend Part 3, Section IV, *Special Industry Classification Procedures*, Rule 7, *Wrecking or Demolition and Building Raising or Moving*, for consistency with other proposed changes.
5. Amend Part 3, Section V, *Payroll – Remuneration*, Rule 1, *Payroll – Remuneration*, Subrule j, *Executive Officers*, Subrule k, *Partners*, Subrule l, *Individual Employers*, and Subrule m, *Members of a Limited Liability Company*, to adjust the minimum and maximum payroll limitations for executive officers, partners, individual employers, and members of a limited liability company to reflect wage inflation since the minimum and maximum payroll limitations were last amended in 2020.
6. Amend Part 3, Section VII, *Standard Classifications*, Rule 2, *Standard Classifications*, as follows:
 - 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*, for consistency with other proposed changes.
 - Amend Classification 9180(1), *Amusement or Recreational Facilities – N.O.C. – operation or maintenance of amusement devices – including ticket collectors connected therewith*, for consistency with other proposed changes.
 - Amend Classification 9181, *Athletic Teams or Athletic Facilities – players, umpires, referees and game officials*, to increase the payroll limitation for players from \$139,100 to \$144,300 per player per season to reflect wage inflation since the payroll limitation was last amended in 2020.

- Amend Classification 7607(2), *Audio Post-Production*, to increase the annual payroll limitation from \$139,100 to \$144,300 per person to reflect wage inflation since the payroll limitation was last amended in 2020.
- Amend Classification 8803, *Auditing, Accounting or Management Consulting Services*, to increase the annual payroll limitation from \$139,100 to \$144,300 per person to reflect wage inflation since the payroll limitation was last amended in 2020.
- Amend Classification 2576, *Awning, Tarp or Canvas Goods Mfg.*, for consistency with other proposed changes.
- Amend Classification 9586, *Barber Shops, Hair Styling Salons and Personal Appearance Services*, to clarify the application.
- Amend Classification 6834, *Boat Building or Repairing*, for consistency with other proposed changes.
- Amend Classification 9016(4), *Boat Marina and Boat Rental Operation*, for consistency with other proposed changes.
- Amend Classification 3726, *Boiler Installation, Service or Repair*, for consistency with other proposed changes.
- Eliminate Classification 5040(2), *Bridge Building*, as an alternate phraseology to Classification 5040, *Iron or Steel Erection – structural*, and reassign the operations described by this classification to Classification 5040, *Iron or Steel Erection – structural*.
- Amend Classification 6003(3), *Bridge or Trestle Construction*, for consistency with other proposed changes.
- Amend Classification 5222(2), *Chimney Construction*, for consistency with other proposed changes.
- Amend Classification 9060, *Clubs – country or golf*, to clarify the application.
- Amend Classification 9069, *Clubs – gaming*, to clarify the application and provide direction as to how related operations should be classified.
- Amend Classification 8859(1), *Computer Programming or Software Development*, to increase the annual payroll limitation from \$139,100 to \$144,300 per person to reflect wage inflation since the payroll limitation was last amended in 2020.
- Amend Classification 5222(1), *Concrete Construction – in connection with bridges or culverts where clearance exceeds 10 feet at any point or entire distance between terminal abutments exceeds 20 feet*, for consistency with other proposed changes.

- Amend Classification 3060(2), *Door or Window Frame Mfg.*, for consistency with other proposed changes.
- Amend Classifications 6218(1)/6220(1), *Excavation*, to clarify the intended application and provide direction as to how related operations should be classified.
- Amend Classification 0171, *Field Crops*, which is part of the *Farms* Industry Group, for consistency with existing classification phraseology.
- Eliminate Classification 5102(3), *Floor Installation*, as an alternate phraseology to Classification 5102, *Iron, Steel, Brass, Bronze or Aluminum Erection – non-structural*, and reassign the operations described by this classification to Classification 5102, *Iron, Steel, Brass, Bronze or Aluminum Erection – non-structural*.
- Amend Classification 6504, *Food Products Mfg. or Processing*, which is part of the *Food Packaging and Processing* Industry Group, to clarify the intended application and provide direction as to how related operations should be classified.
- Amend Classification 9050, *Hotels, Motels or Short-Term Residential Housing*, to provide direction as to how related operations should be classified.
- Amend Classification 8859(2), *Internet or Web-Based Application Development or Operation*, to increase the annual payroll limitation from \$139,100 to \$144,300 per person to reflect wage inflation since the payroll limitation was last amended in 2020.
- Eliminate Classification 5057, *Iron or Steel Erection – N.O.C.*, to clarify the classifications applicable to non-structural iron or steel erection operations and reassign the operations described by this classification to Classification 5102, *Iron, Steel, Brass, Bronze or Aluminum Erection – non-structural*.
- Eliminate Classification 5059, *Iron or Steel Erection – structural*, to clarify the classifications applicable to structural iron or steel erection operations and reassign the operations described by this classification to Classification 5040, *Iron or Steel Erection – structural*.
- Amend Classification 5040(1), *Iron or Steel Erection – structural and exterior installation*, to apply to all structural iron or steel erection operations and non-structural iron or steel erection operations when performed by the same employer in connection with the structural steel erection at the same job or location and to provide direction as to how related operations should be classified.

- Amend Classification 5102(1), *Iron, Steel, Brass, Bronze or Aluminum Erection*, to apply to the installation or erection of all non-structural iron, steel, brass, bronze or aluminum metal work, including elevated floor installation, and for clarity.
- Amend Classification 9008, *Janitorial Services*, to clarify the intended application and provide direction as to how related operations should be classified.
- Amend Classification 8820, *Law Firms*, to increase the annual payroll limitation from \$139,100 to \$144,300 per person to reflect wage inflation since the payroll limitation was last amended in 2020.
- Amend Classification 8743, *Mortgage Brokers*, to increase the annual payroll limitation from \$139,100 to \$144,300 per person to reflect wage inflation since the payroll limitation was last amended in 2020.
- Amend Classification 9610, *Motion Pictures – production*, to increase the annual payroll limitation for actors, musicians, producers and the motion picture director from \$139,100 to \$144,300 per person to reflect wage inflation since the payroll limitation was last amended in 2020.
- Amend Classification 4635, *Oxygen or Hydrogen Mfg.*, for consistency with other proposed changes.
- Eliminate Classification 5040(3), *Painting – steel structures or bridges*, as an alternate phraseology to Classification 5040, *Iron or Steel Erection – structural*, and reassign the operations described by this classification to Classification 5040.
- Amend Classification 7198(1), *Parcel Delivery and Messenger Service Companies*, to clarify the intended application.
- Amend Classification 4299(1), *Printing Operation – all other employees*, which is part of the *Printing, Publishing and Duplicating* Industry Group, to clarify the intended application.
- Amend Classification 7610, *Radio, Television or Commercial Broadcasting Stations*, to increase the annual payroll limitation for on-air personalities, entertainers and musicians from \$139,100 to \$144,300 per person to reflect wage inflation since the payroll limitation was last amended in 2020.
- Amend Classification 5146(2), *Sign Installation or Repair*, which is part of the *Sign* Industry Group, for consistency with other proposed changes.
- Amend Classification 1741(1), *Silica Grinding*, to provide direction as to how related operations should be classified.

- Amend Classification 9184, *Ski Resorts*, for consistency with other proposed changes.
- Amend Classifications 5632/5633, *Steel Framing – light gauge*, for consistency with other proposed changes.
- Amend Classification 8046, *Stores – automobile or truck parts or accessories*, which is part of the *Stores* Industry Group, to clarify the intended application.
- Amend Classification 8039, *Stores – department stores*, which is part of the *Stores* Industry Group, to increase the minimum annual payroll from \$1,100,000 to \$1,200,000 to reflect wage inflation since the threshold was last amended in 2019.
- Amend Classification 8010, *Stores – hardware, electrical or plumbing supplies*, which is part of the *Stores* Industry Group, to clarify that it includes the sale of welding supplies and welding or medical gases, as Classification 8110, *Stores – welding supplies*, is being eliminated, and provide direction as to how related operations should be classified.
- Eliminate Classification 8110, *Stores – welding supplies*, which is part of the *Stores* Industry Group, and reassign the operations described by this classification to Classification 8010, *Stores – hardware, electrical or plumbing supplies*, as these employers are contemplated within the proposed definition of Classification 8010.
- Amend Classification 7365, *Taxicab Operations*, to increase the minimum annual payroll per taxicab from \$38,400 to \$39,700 to reflect wage inflation since the threshold was last amended in 2020.
- Amend Classification 9531(1), *Telecommunication Antenna Equipment Installation, Service or Repair*, for consistency with other proposed changes.
- Amend Classification 9529(3), *Tent – erection, removal or repair*, for consistency with other proposed changes.
- Amend Classification 9156, *Theaters – dance, opera and theater companies*, to increase the annual payroll limitation for performers and directors of performers from \$139,100 to \$144,300 per person to reflect wage inflation since the payroll limitation was last amended in 2020.
- Amend Classification 9151, *Theaters – musical entertainment*, to increase the annual payroll limitation for performers and directors of performers from \$139,100 to \$144,300 per person to reflect wage inflation since the payroll limitation was last amended in 2020.

- Amend Classification 3383(4), *Trophy Mfg.*, to clarify the intended application.
 - Amend Classification 7607(1), *Video Post-Production*, to increase the annual payroll limitation from \$139,100 to \$144,300 per person to reflect wage inflation since the payroll limitation was last amended in 2020.
 - Amend Classification 9521(3), *Window Covering*, for consistency with other proposed changes.
 - Amend Section VIII, *Abbreviated Classifications – Numeric Listing*, for consistency with other proposed changes.
7. Amend Part 4, *Unit Statistical Report Filing Requirements*, Section II, *Definitions*, Rule 12, *Final Premium*, to clarify in the example that premium charges related to Coronavirus 2019 (COVID-19) are included in the reported Final Premium for policies incepting on or after January 1, 2021 with a required date of reporting on or after September 1, 2022.
 8. Amend Appendix I, *Construction and Erection Classifications*, for consistency with other proposed changes.

Amendments to the *Miscellaneous Regulations for the Recording and Reporting of Data—1995*, Title 10, California Code of Regulations, Section 2354, Effective September 1, 2021

1. Amend Part 1, *General Provisions*, Section I, *Introduction*, Rule 2, *Effective Date*, to show that the effective date of the amended Miscellaneous Regulations is 12:01 AM, September 1, 2021.
2. Amend Part 2, *Workers' Compensation Forms and Coverage*, Section II, *Conformity with Insurance Code and California Code of Regulations*, to include policy requirements and for clarity and consistency with Insurance Code Section 381.

Amendments to the *California Workers' Compensation Experience Rating Plan—1995*, Title 10, California Code of Regulations, Section 2353.1, Effective January 1, 2021

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, September 1, 2021.
2. Amend Section II, *Definitions*, to move the Change in Ownership definition to Section IV, *Change in Status and Combination of Entities*, Rule 1, *Change in Status (Ownership, Operations and Employees)*, and include grandmother and grandfather in the definition of Immediate Family for completeness.

3. Amend Section III, *Eligibility and Experience Period*, Rule 1, *Eligibility Requirements for California Workers' Compensation Insurance*, to adjust the eligibility threshold from \$9,900 to \$9,500 to reflect wage inflation and the proposed September 1, 2021 expected loss rates.
4. Amend Section IV, *Change in Status and Combination of Entities*, to include the description of when a change in ownership occurs and for clarity.
5. Amend Section IV, *Rule 2, Combination of Entities*, for clarity.
6. Amend Table I, *Expected Loss Rates and D-Ratios*, to reflect the most current data available.
7. Amend Table II, *Primary Thresholds*, to reflect the most current data available.

Amendments to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, Title 10, California Code of Regulations, Section 2318.6, Effective September 1, 2022

1. Amend Classification 8808, *Banks*, to limit an employee's annual payroll and direct that the maximum payroll amount shall be prorated based upon the number of weeks in the policy period when the policy is in force for less than a 12-month period.
2. Amend Classification 8801, *Credit Unions*, to limit an employee's annual payroll and direct that the maximum payroll amount shall be prorated based upon the number of weeks in the policy period when the policy is in force for less than a 12-month period.
3. Amend Classification 8601(1), *Engineers*, to limit an employee's annual payroll and direct that the maximum payroll amount shall be prorated based upon the number of weeks in the policy period when the policy is in force for less than a 12-month period.
4. Amend Classification 8601(4), *Forest Engineers*, to limit an employee's annual payroll and direct that the maximum payroll amount shall be prorated based upon the number of weeks in the policy period when the policy is in force for less than a 12-month period.
5. Amend Classification 8822, *Insurance Companies*, to limit an employee's annual payroll and direct that the maximum payroll amount shall be prorated based upon the number of weeks in the policy period when the policy is in force for less than a 12-month period.
6. Amend Classification 8749, *Mortgage Bankers*, to limit an employee's annual payroll and direct that the maximum payroll amount shall be prorated based upon the number of weeks in the policy period when the policy is in force for less than a 12-month period.

7. Amend Classification 8601(2), *Oil or Gas Geologists or Scouts*, which is part of the *Petroleum Industry* Group, to limit an employee's annual payroll and direct that the maximum payroll amount shall be prorated based upon the number of weeks in the policy period when the policy is in force for less than a 12-month period.
8. Amend Classification 8741, *Real Estate Agencies*, to limit an employee's annual payroll and direct that the maximum payroll amount shall be prorated based upon the number of weeks in the policy period when the policy is in force for less than a 12-month period.

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-2021-00001 and is available for inspection and copying 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.

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.

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.