



November 16, 2017

DCRB CIRCULAR NO. 939

To All Members of the DCRB:

Re: **APPROVAL OF DCRB FILING NO. 1703**
ESTABLISHMENT OF NOTIFICATION OF CHANGE OF OWNERSHIP ENDORSEMENT AND
ADDITION OF CORRESPONDING LANGUAGE TO THE EXPERIENCE RATING PLAN
EFFECTIVE DECEMBER 1, 2017

The Delaware Insurance Commissioner has approved the DCRB's filing regarding the use of mandatory endorsement Notification of Change of Ownership (WC 00 04 14), beginning with new and renewal policies effective 12:01 a.m., December 1, 2017 or later. In coordination with the use of the endorsement, new instructive language will be included in the DCRB's Workers Compensation Manual of Rules, Classifications and Rating Values for Workers Compensation and Employers Liability Insurance (Basic Manual), Section 5-Experience Rating Plan.

This effective date implementation aligns concurrently with the DCRB's normal annual loss cost and residual market rate revision filing which was approved by the Commissioner on October 17, 2017 (Refer to DCRB Circular 938). This coordination will consolidate necessary changes that members and other constituents must make to policies, forms and systems.

The Manual housekeeping revisions are summarized below:

Section 3

- The addition of the Notification of Change of Ownership Endorsement WC 00 04 14

Section 5

- Reporting Requirement Change-Changes in ownership must be reported to the carrier by the employer within 90 days of the date of the change.
- Enhanced language to explain the insured's responsibility to report ownership information and combinability changes to their insurer, as well as the impact of withholding this information

For additional information, please refer to Filing No. 1703, posted under the "Filings" tab of the DCRB's website (<http://www.dcrb.com>). Please contact Drew Kratz, Manager-Rating Rules & Policy Reporting, at (215) 320-4432 or at dkratz@dcrb.com for any questions regarding this Circular. The Basic Manual will be updated on DCRB's website at a later date.

William V. Taylor
President

NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured

Policy No.

Endorsement No.
Premium

Insurance Company

Countersigned by _____

WC 00 04 14
(Ed. 7-90)

9. Ownership Changes.

(a) For purposes of this Plan, a change in ownership includes any of the following:

- (i) sale, transfer or conveyance of all or a portion of an entity's ownership interest
- (ii) sale, transfer or conveyance of an entity's physical assets to a purchasing entity which takes over the operation of the selling entity and wherein the selling entity
 - (a) becomes entirely inactive with no employees or
 - (b) retains a few employees for the purpose of closing out its affairs prior to dissolution as a legal entity or
 - (c) retains a few clerical employees for the purpose of carrying on operations in connection with investment of its financial assets
- (iii) merger or consolidation of two or more entities
- (iv) formation of a new entity subsequent to the dissolution or non-operative capacity of an entity
- (v) voluntary or court mandated establishment of a trustee or receiver, excluding a debtor in possession, a trustee under a revocable trust or franchisor

(b) Reporting Requirement. When an ownership change occurs, the Notification of Change in Ownership Endorsement (WC 00 04 14) requires any change in ownership and/or combinability status be reported in writing by the employer to its carrier within ninety (90) days of the date of the change. This can be accomplished by submitting a completed Confidential Request for Information Form (ERM-14 form) or by providing the information in narrative form on the letterhead of the insured, signed by an officer of the entity.

Failure to report changes in ownership in line with Endorsement WC 00 04 14 may be considered modification evasion. See Section III, 9-h.

(c) Continuation of Experience. Unless excluded under paragraph (c), the experience for any entity undergoing a change in ownership shall be transferred to the experience of the acquiring, surviving or new entity. The date of revision will be the later of the following two dates: 1) the ---effective date of the policy in effect at the time the Bureau receives a completed ERM-14 form outlining the ownership change or 2) the date on which the change in ownership occurred.

(i) **Partial Sale:** If an entity disposes of a part of its assets or operations but otherwise continues to operate its business, all experience incurred prior to the sale shall be used in future ratings of the entity.

NOTE: Future experience ratings of a risk shall retain all experience for any part of its operations which may have been discontinued or self-insured.

(d) Exclusion of Experience. The experience of any entity undergoing a change in ownership shall be retained and used in future experience ratings unless one or both of the following requirements (i) and (ii) are met at the same time of the ownership change:

- (i) A change in majority interest occurs and the change in majority interest is accompanied by a complete change in operation and function sufficient to result in a change of governing classification and the change in majority interest is accompanied by a change in the process and hazard of the operation
- (ii) A change in majority interest occurs and the change in majority interest is accompanied by a change in employees such that all or a substantial portion of the employees of the new ownership are not retained from the prior ownership.

(e) If the experience of an entity undergoing a change in ownership is to be excluded from future experience ratings for the entity, the experience modification no longer applies as of the date of the ownership change unless the entity is acquired by another entity which has an existing experience modification. In that case, the modification of the acquiring entity shall apply.

(f) **Multiple Entities.** When two entities under substantially the same ownership have been insured under a single policy, and the ownership of one or both of them is changed so that there is no longer any connection between them, the procedure shall be as follows:

(i) If the experience of the entities has been combined for rating purposes during the entire experience period, the experience incurred prior to the change shall not be used for future ratings, unless

(a) the insurance carrier or carriers request that new modifications be established, and

(b) the Bureau is furnished with the experience required for the calculation of such modifications submitted in an acceptable format.

(ii) If the experience of the entities has been combined for less than two years at the time of the change, so that the experience for each entity is available during the period they were separately insured, the experience for each entity shall be used for the purpose of calculating new experience modifications.

When three or more entities under substantially the same ownership have been insured under a single policy, and the ownership of one of the entities has been changed so that there is no longer any connection between it and the remaining entities, the existing experience modification shall continue to apply to the entities whose ownership has not changed. The entity whose ownership has changed shall not be subject to experience modification unless it has been purchased by an entity which has an applicable experience modification.

When three or more entities under substantially the same ownership have been insured under a single policy and the ownership of two or more of the entities has been changed so that common ownership no longer is present, the experience incurred prior to the date of the change shall not be used for future ratings, unless

(a) the insurance carrier or carriers request that new modifications be established, and

(b) the Bureau is furnished with the experience required for the calculation of such modifications submitted in an acceptable format.

(g) **Evasion of Experience Rating Modification.**

(i) **Actions.** Employers, or their representatives, at times take actions for the purpose of avoiding an experience rating modification. They may also take actions for otherwise legitimate business reasons that nonetheless result in the improper application of an experience rating modification. Regardless of intent, any action resulting in the miscalculation, misapplication or omission of an experience rating modification determined in accordance with this Plan is prohibited. These actions can include, but are not limited to:

(a) Failure to report changes in accordance with Endorsement WC 00 04 14

(b) A change in ownership

(c) A change in combinability status

(d) Creation of a new entity

- (e) Misrepresentation on audits or failure to cooperate with an audit

(ii) Bureau Response. In such circumstances the Bureau may obtain information that indicates evasion or improper calculation, application or omission of experience rating modifications due to actions included, but not limited to, those listed above. The Bureau will act to ensure the proper calculation and application of experience rating modifications impacted by these actions. This may include, but is not limited to the:

- (a) Combination of experience that would otherwise not be combinable
- (b) Separation of experience that would otherwise be combinable
- (c) Exclusion of experience that would otherwise be included
- (d) Continuation of experience that would otherwise be withdrawn
- (e) Issuance of experience rating modifications that were not originally issued
- (f) Revision and/or retraction of experience rating modifications