



May 25, 2021

VIA SERFF

The Honorable Trinidad Navarro
Insurance Commissioner
Department of Insurance
State of Delaware
1351 West North Street, Suite 101
Dover, DE 19904

Attention: Tanisha Merced, Deputy Insurance Commissioner

**RE: DCRB Filing No. 2103 – Proposed Effective July 1, 2021
Proposed Revisions to the Experience Rating Plan Manual Rules**

Dear Commissioner Navarro and Deputy Commissioner Merced:

On behalf of the members of the Delaware Compensation Rating Bureau, Inc. (DCRB), we hereby submit the proposed filing for three revisions to the DCRB Workers' Compensation Manual of Rules, Classifications and Rating Values for Workers' Compensation and Employers Liability Insurance (Basic Manual). These revisions are proposed for experience ratings published by the DCRB with issuing dates of July 1, 2021 or later. The proposed effective date of July 1, 2021 coincides with the implementation of a new internal processing system for the DCRB which further streamlines and automates the calculation and issuance of experience ratings.

Proposed Change 1 – Subrogation Recovery Credit calculation

The experience rating programs in all states require an incurred loss limit with some states having variable loss limits and others having a single loss limit. In Delaware, the ratable losses are limited to the accident limitation values shown in Table B (refer to the Experience Rating Plan section of the Basic Manual). The capping process is straightforward but becomes complicated when recoveries are received.

In the Experience Rating Plan, Section V.8.(b) outlines how recoveries under subrogation rights or from third parties are currently handled for experience rating. Under this rule, the ratable losses are capped at the accident limitation values shown in Table B, however this limit is reduced based on the amount of those recoveries compared to the total incurred losses. For example, if the expected losses are \$5,207 for a risk and a \$100,000 claim received \$25,000 in subrogation, the ratable loss limit of \$26,615 would be decreased by \$25,000/\$100,000, to \$19,961. Based on this, if a claim remains open or reopens, and additional payments are made, the incurred losses would be limited based on a reduced limit even with the existence of incurred loss development. This secondary cap is counterintuitive when additional loss development is possible and over the last ten years, all states, except for Delaware and Pennsylvania, have eliminated this rule. Based on these factors, the DCRB believes it is appropriate to eliminate this secondary cap where subrogation recoveries exist. This would ensure that ratable losses for all risks are consistently limited to the accident limitation values shown in Table B. The numbers below show very minimal impact of this change. For example, using employers with rating effective dates in Calendar Year 2020, less than 0.2% of the total experience modifications would be impacted by this rule change. These 2020 experience modifications would utilize unit statistical report (USR) experience from

Policy Years 2016, 2017, and 2018 and would result in a negligible overall premium impact of less than 0.01%. Attached is the revised rule containing this proposed change.

Proposed Change 2 – Clarification of Minimum Data Requirements

Timely submission of unit statistical data is essential to ensure that the experience modifications are promulgated by the DCRB. When all the USR data for an employer is available, the DCRB can calculate an experience modification that provides a complete snapshot of the insured's experience (payroll and losses) for the experience period. Experience ratings are issued 60 days prior to the rating effective date. All USR data used to calculate the experience ratings should be reported by that time. However, in some instances, all the necessary data has not been received. Currently, in these situations, the DCRB works to use all the available information to promulgate an experience modification. This industry practice is commonly referred to as contingent rating. The DCRB looks to formalize this procedure and to ensure processing consistency as we automate the issuance of contingent modifications. Accordingly, the DCRB is filing a minimum data requirements table. This table will be included in the Experience Rating Plan section of the Manual, Rule IV and will outline the minimum data requirements necessary for the calculation of the experience modification. Experience modifications will not be produced if the minimum data requirements are not achieved. Inclusion of the table in the Manual will ensure that all stakeholders are aware of the minimum data required for each experience period. Note that once the missing USR data is received, the experience modification is recalculated to include the missing data and reissued.

In addition to the minimum data requirements table, the DCRB is filing the Contingent Experience Modification Endorsement – WC 00 04 12. This endorsement notifies policyholders that their experience modification is contingent based on the experience. The Contingent Experience Modification is used countrywide and accordingly, this filing will align Delaware with other states that issue contingent modifications. The attached endorsement will be included in the Endorsements section of the Manual.

Please also note that the PCRB recently submitted an analogous filing in Pennsylvania which was just approved, also with effective date of July 1, 2021.

The DCRB is pleased to answer any questions or provide any available supplementary information that you or your staff may require. Please direct all questions to Delisa Fairley, Vice President of Underwriting Services.

William V. Taylor
President

Enclosures

**DELAWARE WORKERS COMPENSATION MANUAL OF RULES, CLASSIFICATIONS AND RATING VALUES FOR
WORKERS COMPENSATION AND FOR EMPLOYERS LIABILITY INSURANCE**

Proposed Effective July 1, 2021

INFORMATION PAGE remains unchanged.

PREFACE remains unchanged.

MEMBERSHIP remains unchanged.

TABLE OF CONTENTS remains unchanged.

SECTION 1 – UNDERWRITING RULES through **SECTION 4 – RETROSPECTIVE RATING** remains unchanged.

SECTION 5 – EXPERIENCE RATING PLAN

SECTION I – INSTRUCTIONS through **SECTION II – DEFINITIONS** remain unchanged.

SECTION III – GENERAL PROVISIONS

Items **1.** through **4.** remain unchanged.

- 5. Experience to be Used.** The ~~entire~~ experience of the risk (except as otherwise provided in [Rule 5 of Section IV and](#) Rule 1 of Section V of this Plan) incurred within the experience period on all its operations, whether such operations are normal to the business or otherwise, shall be reported and used in determining the experience modification. The DCRB ~~may, at its discretion,~~ [will](#) verify any or all the data from which the experience modification is to be determined.

Items **6.** through **10.** remain unchanged.

SECTION IV – APPLICATION OF EXPERIENCE MODIFICATION

Item **1.i.** through **vii.** remains unchanged.

[viii. Premium developed under Code 1212 – Payments to Paid Furloughed Employees Due to Covid-19](#)

Items **2.** through **4.** remain unchanged.

5. Contingent Experience Modifications

- (a) [A contingent experience modification is one that is missing some data but still meets the minimum data requirement displayed in the Minimum Data Requirements Table.](#)
- (b) [Contingent experience modifications are subject to the premium eligibility requirements and must attain the minimum data requirements displayed in the Minimum Data Requirements Table.](#)
- (c) [Minimum Data Requirements](#)
[The following table provides the possible minimum data requirements for all experience periods under the DCRB Experience Rating Plan. Refer to Rule 3, Section III of this Plan for additional information regarding the experience period.](#)

**DELAWARE WORKERS COMPENSATION MANUAL OF RULES, CLASSIFICATIONS AND RATING VALUES FOR
WORKERS COMPENSATION AND FOR EMPLOYERS LIABILITY INSURANCE**

Proposed Effective July 1, 2021

Minimum Data Requirements Table

<u>Months of Data included in calculation</u>	<u>Minimum Number of Months of 1st Report Unit Statistical Data Required</u>	<u>Months of Data included in calculation</u>	<u>Minimum Number of Months of 1st Report Unit Statistical Data Required</u>
<u>Less than 12</u>	<u>All Data</u>	<u>35</u>	<u>23</u>
<u>12-24</u>	<u>12</u>	<u>36</u>	<u>24</u>
<u>25</u>	<u>13</u>	<u>37</u>	<u>25</u>
<u>26</u>	<u>14</u>	<u>38</u>	<u>26</u>
<u>27</u>	<u>15</u>	<u>39</u>	<u>27</u>
<u>28</u>	<u>16</u>	<u>40</u>	<u>28</u>
<u>29</u>	<u>17</u>	<u>41</u>	<u>29</u>
<u>30</u>	<u>18</u>	<u>42</u>	<u>30</u>
<u>31</u>	<u>19</u>	<u>43</u>	<u>31</u>
<u>32</u>	<u>20</u>	<u>44</u>	<u>32</u>
<u>33</u>	<u>21</u>	<u>45</u>	<u>33</u>
<u>34</u>	<u>22</u>		

SECTION V – TABULATION OF EXPERIENCE

Items 1. through 7. remain unchanged.

8. Third Party Cases.

Item (a) remains unchanged.

(b) Settled Cases. In cases where the carrier has received reimbursement under subrogation rights, or where the injured employee or his dependents have recovered from a third party, only the net losses shall be used in the rating and will not exceed the maximum accident limitation value in Table B, column (3). ~~the procedure shall be as follows:~~

~~In cases where the total incurred cost prior to recovery is less than the accident limitation value shown in Table B, column (3), only the net loss shall be used in the rating. In cases where the total incurred cost prior to recovery exceeds the accident limitation value shown in Table B, column (3), the amount to be used in the rating shall be such proportion of the limiting value as the net loss bears to the total incurred cost prior to recovery.~~

SECTION VI – RATING PROCEDURE through **TABLE B** remains unchanged.

SECTION 6 – MERIT RATING PLAN remains unchanged.

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Items **1.** through **4.** remain unchanged.

- 5. Experience to be Used.** The experience of the risk (except as otherwise provided in Rule 5 of Section IV and Rule 1 of Section V of this Plan) incurred within the experience period on all its operations, whether such operations are normal to the business or otherwise, shall be reported and used in determining the experience modification. The DCRB will verify any or all the data from which the experience modification is to be determined.

Items **6.** through **10.** remain unchanged.

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The following table provides the possible minimum data requirements for all experience periods under the DCRB Experience Rating Plan. Refer to Rule 3, Section III of this Plan for additional information regarding the experience period.

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Less than 12	All Data	35	23
12–24	12	36	24
25	13	37	25
26	14	38	26
27	15	39	27
28	16	40	28
29	17	41	29
30	18	42	30
31	19	43	31
32	20	44	32
33	21	45	33
34	22		

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SECTION VI – RATING PROCEDURE through **TABLE B** remains unchanged.

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SECTION 3 – ENDORSEMENTS

TABLE OF CONTENTS

Agreement by Executive Officer(s)/LLC Member(s) Not To Be Subject to the Delaware Workers' Compensation Law through **Delaware Merit Rating Plan Endorsement** remains unchanged.

[Contingent Experience Rating Modification Endorsement](#)

[WC 00 04 12](#)

Employers Liability Coverage Endorsement through **Delaware Merit Rating Plan Endorsement** remains unchanged.

Workers Compensation and Employers Liability Policy Forms remains unchanged.

DELAWARE WORKERS COMPENSATION MANUAL OF RULES, CLASSIFICATIONS AND RATING VALUES FOR WORKERS COMPENSATION AND FOR EMPLOYERS LIABILITY INSURANCE

Proposed Effective July 1, 2021

Workers Compensation and Employers Liability Insurance Policy

WC 00 04 12

CONTINGENT EXPERIENCE RATING MODIFICATION ENDORSEMENT

The premium for this policy will be adjusted by an experience rating modification factor. The factor shown in the schedule is the Contingent Experience Rating Modification factor based on the appropriate experience data available and replaces any prior experience modification factor. We will issue an endorsement to show a revised factor if appropriate additional experience data becomes available. The contingent factor will apply unless a revised factor is subsequently issued.

Schedule

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 12
(Ed. 1-90)

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**DELAWARE WORKERS COMPENSATION MANUAL OF RULES, CLASSIFICATIONS AND RATING VALUES FOR
WORKERS COMPENSATION AND FOR EMPLOYERS LIABILITY INSURANCE**

Proposed Effective July 1, 2021

SECTION 4 – RETROSPECTIVE RATING remains unchanged

SECTION 5 – EXPERIENCE RATING PLAN remains unchanged.

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