

c a l i f o r n i a

Miscellaneous Regulations for the Recording and Reporting of Data—1995

Title 10, California Code of Regulations, Section 2354

Effective January 1, 2020

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Memorandum

Regarding the January 1, 2020 Revisions to the Miscellaneous Regulations for the Recording and Reporting of Data—1995

Revisions Approved Effective January 1, 2020

Part 1, *General Provisions*

1. Section I, *Introduction*, Rule 2, *Effective Date*, was amended to show that the effective date of the amended Miscellaneous Regulations is 12:01 AM, January 1, 2020.
2. Section III, *Inquiries, Complaints and Requests for Action, Reconsideration and Appeals*, Rule 1, *Purpose and Time Limitation*, was amended for consistency with the *California Workers' Compensation Experience Rating Plan—1995*.
3. Section III, Rule 5, *Revisions*, was amended for clarity.

Part 3, *Group Workers' Compensation Insurance*

4. Section II, *Procedure for Obtaining Approval of Group Workers' Compensation Insurance*, was amended to remove the non-statutorily required insurer submissions for group insurance policies and for clarity.

Table of Contents

Part 1 – General Provisions	1
Section I – Introduction	1
1. Authority	1
2. Effective Date	1
Section II – General Definitions	1
1. Employers' Liability	1
2. Employers' Liability Insurance	1
3. Experience Rating Plan	1
4. Insolvent Insurer Rating Adjustment Factor	1
5. Uniform Statistical Reporting Plan	1
6. WCIRB	1
7. Workers' Compensation	1
8. Workers' Compensation Insurance	2
Section III – Inquiries, Complaints and Requests for Action, Reconsideration and Appeals	2
1. Purpose and Time Limitation	2
2. Inquiries	2
3. Complaints and Requests for Action	2
4. Reconsideration and Appeals to the Insurance Commissioner	2
5. Revisions	2
Part 2 – Workers' Compensation Forms and Coverage	3
Section I – Approval by Insurance Commissioner	3
Section II – Conformity with Insurance Code and California Code of Regulations	3
Section III – Additional Interests	3
Section IV – Other Classes of Insurance	3
Section V – The Contract	4
Section VI – Excess of Statutory Benefits Prohibited	4
Section VII – Waiver of Subrogation	4
Part 3 – Group Workers' Compensation Insurance	5
Section I – General Instructions	5
Section II – Requirements for Issuing Group Workers' Compensation Insurance	5
Part 4 – Excess Insurance	7
Section I – Specific Excess (Straight Excess)	7
Section II – Aggregate Excess (Stop Loss)	7
Section III – Limitation in Writing of Excess Coverage	7
Part 5 – Data for Insolvent Insurer Rating Adjustment Factor	8

Part 1 – General Provisions
Section I – Introduction

Part 1 – General Provisions**Section I – Introduction****1. Authority**

This regulation has been approved by the Insurance Commissioner of the state of California in accordance with Article 2 of Chapter 2 and Articles 2 and 3 of Chapter 3, Part 3, Division 2, of the California Insurance Code.

2. Effective Date

This regulation is effective at 12:01 AM, January 1, 2020. When an amendment to this regulation is approved, a notice summarizing the amendment and its effective date, as specified by the Insurance Commissioner, will be published by the WCIRB.

This regulation and all amendments thereto, unless otherwise specifically provided, shall apply to a policy with an effective date on or after the effective date of the amendment.

Section II – General Definitions

The definitions set forth in this Section shall govern the construction and meaning of the terms and phrases used in this regulation.

1. Employers' Liability

Any liability, other than for workers' compensation, imposed by the laws of the state of California upon an employer for damages on account of bodily injury to or death of employees arising out of and in the course of employment.

2. Employers' Liability Insurance

The insurance of employers' liability when such insurance is incidental to and written in connection with the workers' compensation insurance issued to and covering the same policyholder or policyholders.

3. Experience Rating Plan

The *California Workers' Compensation Experience Rating Plan—1995*, approved by the Insurance Commissioner of the state of California, Title 10, California Code of Regulations, Section 2353.1.

4. Insolvent Insurer Rating Adjustment Factor

Factor computed pursuant to the WCIRB's advisory California Insolvent Insurer Rating Adjustment Plan, or other similar plan filed by an insurer with the California Department of Insurance, Rate Filing Bureau, that allows the premium charged to a policyholder that is ineligible for experience rating due to a lack of insolvent insurer data to be increased or decreased based on the experience developed by the policyholder.

5. Uniform Statistical Reporting Plan

The *California Workers' Compensation Uniform Statistical Reporting Plan—1995*, approved by the Insurance Commissioner of the state of California, Title 10, California Code of Regulations, Section 2318.6.

6. WCIRB

The Workers' Compensation Insurance Rating Bureau of California, a rating organization licensed by the California Department of Insurance and designated as the Insurance Commissioner's statistical agent in accordance with the provisions of Sections 11750 *et seq.* of the California Insurance Code.

7. Workers' Compensation

The obligation imposed upon an employer by the workers' compensation laws of the state of California to pay the benefits prescribed by such laws.

Part 1 – General Provisions**Section III – Inquiries, Complaints and Requests for Action, Reconsideration and Appeals**

8. Workers' Compensation Insurance

Insurance of workers' compensation liability and, except when otherwise stated, also refers to employers' liability insurance.

Section III – Inquiries, Complaints and Requests for Action, Reconsideration and Appeals**1. Purpose and Time Limitation**

This Section of the Plan explains how an insured employer may (a) request review if it believes its workers' compensation insurance coverage as written is contrary to this regulation or any other regulations of the Insurance Commissioner governing workers' compensation insurance and (b) request review of a decision, action or omission to act by the WCIRB. This process enables the insured employer to obtain review of the matter by the WCIRB and, if necessary, the Insurance Commissioner.

An insured employer's initial request for review must be received by the WCIRB within twelve (12) months after the expiration date of the policy to which the request for review pertains, except if the request for review involves the application of the Revision of Losses rule found at Section VI, Rule 7, of the Experience Rating Plan.

2. Inquiries

An insured employer may commence the review process and the WCIRB shall issue a decision by following the procedures for written Inquiries found at Part 1, Section V, Rule 2, of the Uniform Statistical Reporting Plan.

3. Complaints and Requests for Action

An insured employer, insurer, or other aggrieved person seeking review of a WCIRB decision, action, or omission to act that is contrary to this regulation, or review of the manner in which this regulation, or any other applicable regulations of the Insurance Commissioner, has been applied in connection with its workers' compensation insurance, shall follow the procedures for Complaints and Requests for Action found at Part 1, Section V, Rule 3, of the Uniform Statistical Reporting Plan and the regulations found at Title 10, California Code of Regulations, Sections 2509.40 *et seq.*

4. Reconsideration and Appeals to the Insurance Commissioner

An insured employer, insurer, or other aggrieved person who is dissatisfied with the WCIRB's decision upon a Complaint and Request for Action may request that the WCIRB reconsider its decision. Requests for reconsideration must be filed pursuant to the procedures found at Part 1, Section V, Rule 4, of the Uniform Statistical Reporting Plan and Title 10, California Code of Regulations, Section 2509.45(b).

Alternatively, an insured employer, insurer, or other aggrieved person who is dissatisfied with the WCIRB's response to or failure to respond to a Complaint and Request for Action, or the WCIRB's decision upon or failure to respond to a request for reconsideration, may appeal directly to the Insurance Commissioner. Appeals must be filed pursuant to Title 10, California Code of Regulations, Sections 2509.40 *et seq.*

5. Revisions

Any change resulting from a decision upon an Inquiry, Complaint and Request for Action, request for reconsideration, or appeal shall be applied in accordance with this regulation or other applicable statutes or regulations. If a loss correction is required pursuant to the Revision of Losses rule, the current experience rating for purposes of the application of that rule shall be the experience modification in effect on the day the initial request for review was received by the WCIRB.

Part 2 – Workers' Compensation Forms and Coverage
Section I – Approval by Insurance Commissioner

Part 2 – Workers' Compensation Forms and Coverage**Section I – Approval by Insurance Commissioner**

Workers' compensation insurance shall be written only upon policy forms and appropriate endorsement forms approved by the Insurance Commissioner prior to any use thereof.

Pursuant to Section 2254 of Title 10 of the California Code of Regulations, all workers' compensation insurance policy and endorsement forms must be submitted to the WCIRB for preliminary inspection. The WCIRB shall review the forms and submit to the Insurance Commissioner for final action all non-standard policy and endorsement forms that have not been previously approved by the Commissioner as to substance and form.

Section II – Conformity with Insurance Code and California Code of Regulations

Under no circumstances shall workers' compensation insurance be written under any policy, binder or other contract except in conformity with Insurance Code Sections 381, 382, 11657, 11658 and 11659 and with Article 7, Subchapter 2 (Sections 2250 *et. seq.*, regarding workers' compensation policy forms), and Article 9, Subchapter 3 (Sections 2500 *et. seq.*, regarding dividends to policyholders), of Chapter 5, Title 10, California Code of Regulations.

Section III – Additional Interests

As used in this paragraph, "employer" includes individual, joint venture, partnership, limited liability partnership, unincorporated association, corporation or fiduciary operation (e.g., trust, receivership or estate of deceased individual). Two or more employers may be named as the insureds in a single workers' compensation policy only if their experience is combinable under the rules of the Experience Rating Plan or they share a joint liability to pay workers' compensation to employees engaged in connection with the same work, and not otherwise. Other employers may be added by endorsement to a policy to insure them against their workers' compensation liability arising in particular and described circumstances as to which the named insured (or all of the named insureds if more than one) and the additional insured have joint liability to pay workers' compensation to employees engaged in the same work, or as permitted in Rule 4, *Application of Experience Modification to Policies Covering Employee Leasing Arrangements*, Section V, *Application of Experience Modification*, of the Experience Rating Plan, and not otherwise. A member of a joint venture, however, shall not be included as an additional insured employer on the policy issued to the joint venture and a joint venture may only be added on as an additional insured on a policy of a member of the joint venture if the extension of coverage to the joint venture is limited to apply only as respects the employees of such member.

Section IV – Other Classes of Insurance

Except as provided for in Section 11590 of the California Insurance Code, workers' compensation insurance or workers' compensation insurance and employers' liability insurance shall be provided in a separate policy that shall not provide insurance of any other class or classes. The contract providing workers' compensation insurance or workers' compensation insurance and employers' liability insurance shall not be amended or supplemented by endorsement, rider, or other contract or agreement to provide for the combination or inclusion therein of any other class or classes of insurance, nor shall workers' compensation insurance or workers' compensation insurance and employers' liability insurance be added by endorsement, rider, or supplemental contract to a policy providing any other class or classes of insurance. For the purpose of this regulation, (a) insurance of liability of an employer to his employees and their dependents on account of bodily injuries to or death of employees arising out of and in the course of employment under a workers' compensation law or under an employers' liability law or the common law of other sovereignties; (b) voluntary compensation insurance for maritime and other employments that are not within the scope of the workers' compensation law by requirement or election; or (c) insurance of liability of an employer under the United States Longshore and Harbor Workers' Compensation Act shall not be considered to be another class or classes of insurance.

Part 2 – Workers' Compensation Forms and Coverage
Section V – The Contract

Section V – The Contract

Each policy issued must contain in substance the following provision: "This policy, including all endorsements or riders forming a part thereof, constitutes the entire contract of insurance. No condition, provision, agreement, or understanding not set forth in the policy or in such endorsement or rider shall affect such contract or any rights, duties, or privileges arising therefrom."

Section VI – Excess of Statutory Benefits Prohibited

No workers' compensation insurance policy shall be written to afford compensation or medical or surgical aid in excess of that required by the statutory provisions.

Section VII – Waiver of Subrogation

Any agreement tending to waive the insurer's right to subrogation must be set forth in the form of an endorsement to the policy.

Part 3 – Group Workers' Compensation Insurance
Section I – General Instructions

Part 3 – Group Workers' Compensation Insurance**Section I – General Instructions**

1. An insurer may insure an organization or association of employers as a group pursuant to the provisions of Sections 11656.5, 11656.6 and 11656.7 of the California Insurance Code if such organization or association files with the WCIRB the documents, statements and agreements required to be filed by Section 11656.6. Such documents, statements and agreements should be filed at least thirty (30) days prior to the effective date of the proposed group policy.
2. Separate policies must be issued for each member of the group unless their experience is combinable pursuant to Part 2, Section III, *Additional Interests*. Pursuant to Section 11656.7 of the California Insurance Code, each member of an organization insured under a group policy shall be treated as a single and separate entity as respects experience rating and standard classification assignments.

Section II – Requirements for Issuing Group Workers' Compensation Insurance

1. Before an insurer may issue a new group workers' compensation policy, as defined in California Insurance Code Section 11656.7, the insurer shall, not less than thirty (30) days prior to the effective date of the proposed group policy, file with the WCIRB:
 - a. All documents and statements required of the organization or association of employers by the provisions of California Insurance Code Section 11656.6 and California Code of Regulations, Title 10, Section 2508.
 - (1) A copy of the articles of incorporation and bylaws (or agreement of association and rules and regulations), all certified by the custodian of the originals;
 - (2) If the association has agreed to pay past due premium of individual group members, an agreement stating that if the insurer notifies the association of the nonpayment of a premium by an individual group member within 60 days after the premium was due the association will be responsible for past due premiums and that the association and insurer agree to use dividends due for nonpayment of past due premiums as well as a resolution of the governing board of the association authorizing the execution of the agreement;
 - (3) An agreement confirming that all members of the association which are to be insured by the group insurance are engaged in a common trade or business and are members in good standing, and that the association will notify the insurer of any change in such status for the purpose of immediate elimination from participation in the group plan;
 - (4) A statement from the association setting forth the association's reason for desiring group insurance;
 - (5) A statement from the association undertaking to establish and maintain a safety committee which, by education or otherwise, will seek to reduce the incidence and severity of accidents;
 - (6) A statement from the association certifying that no less than 75% of the regular membership of the association is engaged in a common trade or business and that such percentage of membership will be maintained during the time the group insurance is in force; and
 - (7) A statement certifying that no less than 75% of the regular members of the association and each member of the association to be insured by group insurance is engaged in a common trade or business as specified in one of the following:

Part 3 – Group Workers' Compensation Insurance**Section II – Requirements for Issuing Group Workers' Compensation Insurance**

- i. Fifty-one percent or more of the total payroll is developed under a single standard classification (the classification must be specified).
 - ii. Fifty-one percent or more of the total payroll is developed under any combination of standard classifications applicable to agricultural enterprises.
 - iii. Fifty-one percent or more of the total payroll is developed under any combination of standard classifications applicable to the building and construction industry.
 - iv. Fifty-one percent or more of the total payroll is developed under any combination of standard classifications applicable to the transportation and warehousing industry.
 - v. Fifty-one percent or more of the total payroll is developed under any combination of standard classifications applicable to the timber and lumber industry.
 - vi. Fifty-one percent or more of the total payroll is developed under any combination of standard classifications applicable to public agencies providing industrial, domestic or agricultural water services.
 - vii. Fifty-one percent or more of the total payroll is developed under any combination of standard classifications applicable to sheltered workshops and rehabilitation facilities licensed pursuant to California Labor Code Section 1191.5.
 - viii. Fifty-one percent or more of the total payroll of manufacturing facilities as identified in Sectors 31 to 33, inclusive, of the North American Industry Classification System that is developed under any combination of standard classifications applicable to manufacturing concerns engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products.
 - ix. Seventy-five percent or more of the total payroll is developed under the same two standard classifications (the two classifications must be specified). Fifty percent or more of the association's present members have been members for at least one year prior to the issuance of the group insurance policy.
2. No less frequently than once every five years, the insurer shall, not less than thirty (30) days prior to the effective date of the group policy renewal, file with the WCIRB:
- a. Articles of incorporation and bylaws (or agreement of association and rules and regulations), all certified by the custodian of the originals;
 - b. If the association has agreed to pay past due premium of individual group members, a new agreement stating that if the insurer notifies the association of the nonpayment of premium by an individual group member within 60 days after the premium was due the association will be responsible for past due premiums and that the association and insurer agree to use dividends due for nonpayment of past due premiums as well as a resolution of the governing board of the association authorizing the execution of the agreement;
 - c. An agreement that all employers insured are engaged in a common trade and are members in good standing, and that the association shall immediately notify the insurer of any change in such status for purposes of immediate elimination from participation in the group plan; and
 - d. A statement from the association confirming that the group is being maintained.

Part 4 – Excess Insurance**Section I – Specific Excess (Straight Excess)**

Part 4 – Excess Insurance

The provisions governing the writing of specific excess (straight excess) insurance or aggregate excess insurance set forth in this rule apply in lieu of any other regulations regarding workers' compensation insurance.

Section I – Specific Excess (Straight Excess)

Policies may be issued only to an employer qualified as a self-insurer by having a certificate of consent issued by the Director of Industrial Relations. Such policies are subject to the following conditions:

1. The policy must provide that it covers loss in excess of a fixed amount per event or claim.
2. The policy must be on an annual basis or subject to cancellation on no more than thirty (30) days' notice or must contain a clause providing for a change of policy terms to conform to subsequent legislation and subsequent rules and regulations.
3. A hard copy of each such policy written by a WCIRB member and all endorsements applicable thereto must be submitted to the WCIRB for examination.

Section II – Aggregate Excess (Stop Loss)

Policies may be issued only to an employer qualified as a self-insurer by having a certificate of consent issued by the Director of Industrial Relations. Such policies are subject to the following conditions:

1. The policy must provide that it covers loss in excess of a fixed amount.
2. The policy must be on an annual basis or subject to cancellation on no more than thirty (30) days' notice or must contain a clause providing for a change of policy terms to conform to subsequent legislation and subsequent rules and regulations.
3. A hard copy of each such policy written by a WCIRB member and all endorsements applicable thereto must be submitted to the WCIRB for examination.

Section III – Limitation in Writing of Excess Coverage

No other form of excess workers' compensation coverage shall be written without first procuring the approval of the Department of Insurance.

Part 5 – Data for Insolvent Insurer Rating Adjustment Factor

Part 5 – Data for Insolvent Insurer Rating Adjustment Factor

The WCIRB may supply a policyholder's experience data to an insurer for use in calculating an Insolvent Insurer Rating Adjustment Factor that is to be applied to the coverage the insurer provides to the policyholder if the following conditions are met:

- a. The insurer presents satisfactory evidence to the WCIRB that it has filed the WCIRB's advisory California Insolvent Insurer Rating Adjustment Plan, or other similar plan, with the California Department of Insurance, Rate Filing Bureau, and
- b. The policyholder meets the following three criteria:
 - (1) The policyholder is not eligible for experience rating;
 - (2) One or more policies written by an insolvent insurer incepted during the rating period; and
 - (3) The policyholder was previously subject to experience rating until such time as a policy written by an insolvent insurer incepted during the experience period.



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