



July 24, 2007

BUREAU CIRCULAR NO. 820

To All Members of the Bureau:

Re: **MANUAL REVISION – SECTION 1 – UNDERWRITING RULES**
EFFECTIVE JULY 17, 2007

The Delaware Compensation Rating Bureau, Inc. has filed and the Insurance Commissioner has approved Manual revisions to Section 1 in response to selected portions of Senate Bill 1 as modified by Senate Substitute 1 for Senate Bill 68, which was signed into law to be effective on July 17, 2007. These revisions, therefore, become **effective as of 12:01 a.m., July 17, 2007** with respect to new and renewal business only.

Bureau Circular No. 819 provided discussion of these law changes.

The Manual revisions are shown below with deleted wording bracketed and new wording underlined.

SECTION 1

UNDERWRITING RULES

RULE II – EXPLANATION OF COVERAGES AND METHODS OF INSURING

B. COVERAGE REQUIREMENTS

1. Compulsory as to all employments

Specifically includes persons who are licensed under Title 30, Chapter 25 of the Delaware Code or persons shown to be conducting business in a manner in which they should be so licensed.

Exceptions:

- a. Partners of a partnership or sole proprietors not licensed under Title 30, Chapter 25 of the Delaware Code or shown to be conducting business in a manner in which they should be so licensed.

- b. Farm labor; domestic servants, casual workers earning less than \$750[.00] in three months from one household. Elective as to state and certain counties, cities and towns. Refer to Title 19, Sections 2307, 2308, [and] 2309 and 2311 of the Delaware Workers Compensation Law.

RULE IX - SPECIAL CONDITIONS OR OPERATIONS AFFECTING COVERAGE AND PREMIUM

A. EXECUTIVE OFFICERS

2. Law and Status

- a. Executive Officers of a corporation and members of a limited liability company, which corporation or limited liability company is not licensed under Title 30, Chapter 25 of the Delaware Code or shown to be conducting business in a manner in which they should be so licensed, are covered under the Delaware Workers' Compensation Law. However, up to eight (8) executive officers who are stockholders of the corporation (except construction contractors – see below) or as many as four (4) individuals who are members of a limited liability company, when executing a written agreement between the corporation and such executive officers or between the limited liability company and such members, may elect not to be subject to the law. To exclude such officers or limited liability company members, attach the Partners, Officers and Others Exclusion Endorsement **WC 00 03 08**.
- b. **Construction Contractors:** Executive officers of a corporation and members of a limited liability company, which corporation or limited liability company is licensed under Title 30, Chapter 25 of the Delaware Code or shown to be conducting business in a manner in which they should be so licensed, are covered under the Delaware Workers' Compensation Law. However, up to four (4) executive officers who are stockholders of the corporation or as many as four (4) individuals who are members of a limited liability company, when executing a written agreement between the corporation and such executive officers or between the limited liability company and such members, may elect not to be subject to the law. To exclude such officers or limited liability company members, attach the Partners, Officers and Others Exclusion Endorsement WC 00 03 08.

Note: As a general rule, executive officers and individuals members of a Limited Liability Company may be excluded only on the effective date of the policy. Any exceptions to this general rule must be approved in writing by the carrier issuing the policy.

When executive officers are covered under the law, they have the same status as employees under the policy.

C. Contractors, General Contractors, Subcontractors and Independent Contractor(s) [As Employers]

3. “Independent contractor” shall mean any person not excluded from mandatory coverage under provisions of Delaware Workers Compensation Law, Title 19 §2311, who performs work or provides services for a contractor, subcontractor or other “contracting entity” in return for remuneration and/or other valuable considerations but who is not an employee of the contractor, subcontractor or other “contracting entity” or any other person or entity with respect to the work performed or the services provided. “Contracting entity” shall mean any commercial entity that obtains work or services from a person not excluded from mandatory coverage under provisions of this law and who is not an employee of the “contracting entity” or any other commercial entity with respect to the work performed or services provided.

Important Note:

Partners and sole proprietors, when working in an independent contractor role, shall be subject to the same requirements as outlined above and may not rely upon Title 19 §2308 to elect not to be subject to the law.

Coverage

Independent contractors shall have an option to purchase coverage to satisfy this requirement or alternatively shall be insured by the contractor, general contractor, subcontractor or other contracting entity for which they perform work or provide services.

Up to four (4) executive officers who are stockholders of a corporation and up to four (4) individuals who are members of a limited liability company, which corporation or limited liability company is licensed under Title 30, Chapter 25 of the Delaware Code or shown to be conducting business in a manner in which they should be so licensed, may be exempted from Title 19, Section 2311 (a) (4). Refer to Title 19 §2308 of the Delaware Code for more detail.

Remuneration

Actual remuneration of the independent contractor will be used to determine premium subject to the executive officer minimum and maximum payrolls approved by the Department of Insurance. (Refer to Section 1, Rule IX, A. 3. for more detail.)

- (a) The general contractor, subcontractor or other contracting entity shall furnish satisfactory evidence that the independent contractor had workers' compensation insurance in force during the time within which the work was performed for the general contractor, subcontractor or other contracting entity. For each independent contractor for which such evidence is not furnished, additional premium shall be charged to the policy which insured the general contractor, subcontractor or other contracting entity as follows:
 - i. The general contractor, subcontractor or other contracting entity shall provide a complete payroll record of each uninsured independent contractor. Premium on such payroll shall be based on the classification(s) which would have applied if the independent contractor had been an employee of the general contractor, subcontractor or other contracting entity.

- ii. If the general contractor, subcontractor or other contracting entity does not supply the payroll records of its independent contractor(s), the full subcontract price of the work performed during the policy period by the independent contractor(s) shall be established as the payroll of the independent contractor(s). The additional premium shall be charged on that amount as payroll.

Exception to (a) ii.

If investigation on a specific job discloses that a definite amount of the independent contractor's(s') price represents payroll, such amount shall be the payroll for the additional premium computation. In contracts for: (1) for mobile equipment with operators (such as but not limited to: earth movers, graders, bulldozers, or log skidders), the payroll shall not be less than 33 percent of the independent contractor's(s') price; (2) for labor and material, the payroll shall not be less than 50 percent of the independent contractor's(s') price; (3) for labor only, the payroll shall be established as not less than 90 percent of the independent contractor's(s') price.

- iii. If an experience modification has been established for the general contractor, subcontractor or other contracting entity, such experience modification shall be applied to the premium developed for the uninsured independent contractor.
4. Any contracting entity shall obtain from an independent contractor or subcontractor, and retain for three (3) years from the date of the contract, the following: a notice of exemption of executive officers or limited liability company members and/or a certification of workers compensation insurance in force. If the contracting entity should fail to do so, the contracting entity shall not be deemed the employer of any independent contractor or subcontractor or their employees but shall be deemed to insure any workers' compensation claims arising from the transaction.
5. In all other types of commerce, the determination of employee or independent contractor status shall remain as before the adoption of Title 19 §2311 Subsection (a), and Title 19 §2308 and the other provisions defining employees and persons not covered by Title 19, Chapter 23 of the Delaware Code shall apply.

These Manual revisions will be updated on our website (www.dcrb.com) at a later date.

Timothy L. Wisecarver
President

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