



September 8, 2017

The Honorable Trinidad Navarro
Insurance Commissioner
Department of Insurance
State of Delaware
841 Silver Lake Boulevard
Dover DE 19904-2465

Attention: Mitch Crane, Deputy Insurance Commissioner

**RE: DCRB Filing No. 1703 – Proposed Effective December 1, 2017
Establishment of Notification of Change in Ownership Endorsement and the
Addition of Corresponding Language to the Delaware Experience Rating Plan**

Dear Commissioner Navarro:

Please accept, on behalf of the members of the Delaware Compensation Rating Bureau (DCRB), a filing which introduces and proposes the use of a mandatory endorsement, Notification of Change in Ownership (WC 00 04 14), effective for new and renewal policies incepting on or after 12:01 a.m., December 1, 2017. The purpose of the endorsement is to inform policyholders of their responsibility to notify their insurer whenever a change in ownership or combinability status occurs. It also addresses the potential impact this may have on their experience rating modification.

In conjunction with this endorsement the filing proposes new language which addresses the employer's obligation to notify the insurer of ownership changes and the potential for experience rating modification evasion in the DCRB Workers' Compensation Manual of Rules, Classifications and Rating Values for Workers Compensation and Employers Liability Insurance (Basic Manual), Section 5 - Experience Rating Plan. The new language mimics language found in the endorsement and further explains the insured's responsibility to report ownership and combinability changes to their insurer, as well as the impact of withholding this information.

Endorsement WC 00 04 14 is utilized countrywide in states under the National Council on Compensation Insurance Inc. (NCCI) along with states from other independent jurisdictions. The proposed manual language changes are similar to that used by NCCI. This filing is intended to align Pennsylvania with the other state jurisdictions.

Details of the filing are provided in DCRB's June 21, 2017 memorandum. The memorandum describes and explains the reasoning for the additional language. The additional language is intended to assist in the administration of the DCRB's Experience Rating Plan as it pertains to ownership rulings. The memorandum and proposals were reviewed by the Classification and Rating Committee at the Committee's June 21, 2017 meeting.

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Upon approval of this filing, Section 3 – Endorsements, and Section 5 – Experience Rating Plan, of the DCRB Workers Compensation Manual of Rules, Classifications and Rating Values for Workers Compensation and for Employers Liability Insurance (Basic Manual), will be respectively updated to include endorsement WC 00 04 14 and the additional manual language.

Staff memoranda dated June 2, 2016 and June 21, 2017, endorsement WC 00 04 14 and manual pages are attached as Exhibits 1, 2, 3 and 4.

Thank you in advance for your review and attention to this filing. The DCRB will be pleased to answer any questions that you or the Department of Insurance staff may have regarding these proposals.

Sincerely,

William V. Taylor
President

Enclosures:

Exhibit 1 – Filing memorandum – June 2, 2016
Exhibit 2 – Filing memorandum – June 21, 2017
Exhibit 3 – WC 00 04 14
Exhibit 4 – Manual pages



TO: Delaware Classification and Rating Committee

FROM: Drew Kratz, Manager - Rating Rules & Policy Reporting
Betty Ann Campbell, Director, Rating Rules & Policy Reporting

DATE: June 2, 2016

RE: Delaware Basic Manual Addition of:
WC 00 04 14 – Notification of Change in Ownership endorsement

The National Council on Compensation Insurance (NCCI) introduced WC 00 04 14 – Notification of Change in Ownership endorsement within Item Filing E-1261 with a proposed effective date of July 1, 1990. Since its introduction the endorsement was filed and approved for use in over forty jurisdictions. Research shows the endorsement was not filed for use in Delaware due to similar ownership rules within the Delaware Basic Manual, Section 6 – Experience Rating.

Though the ownership change provisions of the Delaware Experience Rating Plan and the Notification of Change in Ownership endorsement similarly define an ownership change and address the potential impact on an insured's experience rating modification, the Experience Rating Plan does not require the reporting of an ownership change to the carrier of record or set a timeline for such notification.

Staff has noted an increase in the number of ownership changes reported at audit or in some cases, years after the ownership change took place. Staff has also commented that notification of an ownership change where the experience has been continued is often only received after a debit experience modification factor is applied to policy premium. There are other situations where a risk has withheld information regarding an ownership change for years in their attempt to continue a credit experience modification which they may not be entitled.

Application of an experience modification (debit or credit) after receiving notification of a material change in ownership is limited to the following Manual provision, Section 6, Rule 9,

Ownership Changes

(b) 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 anniversary rating date 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.

Note: Anniversary rating date will be replaced with policy effective date, effective May, 1, 2017.

The lack of a reporting requirement for an ownership change unintentionally provides a potential incentive not to submit ownership changes to the carrier of record until a subsequent policy term, or once the experience of a risk has become unfavorable. Late notifications of ownership changes often require staff to rely on outdated information related to employee retention.

Furthermore, staff believes that advance notification to the policyholder by including WC 00 04 14 within the employer's workers compensation policy package will encourage the timely notification of ownership changes; thus, allowing for more efficient review and application of modifications impacted by changes in ownership.

Staff proposes an effective date of **December 1, 2016** for the addition of WC 00 04 14 – Notification of Change in Ownership endorsement.

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 Policy No.	Endorsement No.
Insured		Premium
Insurance Company	Countersigned by _____	

WC 00 04 14
(Ed. 7-90)



TO: Delaware Classification & Rating Committee

FROM : Delisa Fairley, Vice President of Underwriting
Drew Kratz, Manager – Rating Rules & Policy Reporting

DATE: June 21, 2017

RE: Delaware Basic Manual Addition of:
Language addressing reporting requirements for ownership changes

Background:

The DCRB previously submitted for review and received Classification & Rating Committee approval to file endorsement WC 00 04 14 – Notification of Change in Ownership – on behalf of its membership in the state of Delaware. The endorsement defines an ownership change and outlines the requirements for reporting changes to the insurance carrier. The endorsement requires all changes be reported within ninety (90) days of the change.

The provisions of the Delaware Experience Rating Plan also define an ownership change and address the potential impact it may have on an insured’s experience rating modification. The provisions, however, do not specifically address the reporting of ownership changes or the potential for modification evasion by withholding this information. Section 5, Rule 9, Part (b) simply states:

“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.”

Without a set timeframe for reporting an ownership change we have seen a continued increase in the number of ownership changes reported at audit or even policy terms after the fact. The lack of a specific reporting requirement creates an unintentional incentive to submit ownership change information only when it is beneficial and to possibly withhold the information when the outcome is less favorable.

Conclusion and Recommendation:

Staff believes the addition of reporting requirement language within the Delaware Experience Rating Plan, along with the Notification of Change endorsement, will more clearly articulate the requirements and further encourage the timely submission of ownership change information. This will allow for more efficient review and application of modifications impacted by ownership changes. Also, the additional language will not fundamentally change the ownership change provisions, but will strengthen the existing provisions and bring them more in line with the provisions of other jurisdictions.

Staff proposes the changes to the Experience Rating Plan Manual provisions become effective December 1, 2017 concurrent with DCRB's normal annual comprehensive residual market rate and voluntary loss cost filing. Staff further proposes an effective date of April 01, 2018 for the Notification of Change of Ownership Endorsement-WC 00 04 14, applicable to new and renewal policies. This endorsement will be a mandatory endorsement required to be attached at policy issuance. The April 01, 2018 date is recommended to allow for greater industry lead time.

The proposed Experience Rating Plan Manual language revisions and the proposed Notification of Change of Ownership Endorsement-WC 00 04 14 are attached.

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.](#)

(bc) 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.

(ed) 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.

(de) 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.

(ef) **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

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.

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(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:

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(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.

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(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:

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(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:

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- (e) Issuance of experience rating modifications that were not originally issued
- (f) Revision and/or retraction of experience rating modifications