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January 15, 2018

Vermont State Legislature  
115 State Street  
Montpelier, VT 05633-5301

Re: Workers' Compensation Rates for Certain High-Risk Occupations

Dear Vermont Legislators:

This report is submitted to fulfill the requirements for a study of workers' compensation rates for certain high-risk industries in Vermont pursuant to Acts of 2017, No. 80, Sections 18 and 20-22. On November 15, 2017, the Department submitted a related report pursuant to Acts of 2017, No. 77, Section 11. This report is intended to supplement the November 15, 2017 report and provide additional findings relating to workers' compensation for high-risk industries.

This report presents a brief overview of the workers' compensation system in Vermont, including the rate setting process. The workers' compensation insurance market in Vermont is divided into two sectors: the voluntary market, which covers most employers; and the assigned risk market, for employers who are unable to obtain coverage in the voluntary market. Employers in the assigned risk market tend to have poorer safety records (or less established safety records, in the case of new businesses) and higher premiums than employers in the voluntary market. This report examines methods to potentially reduce the high premiums for certain high-risk industries, in both the voluntary and assigned risk markets.

#### I. State and Regional Workers' Compensation Costs in High-Risk Occupations

This report examines workers' compensation loss rates and premiums for high-risk industries in Vermont and compares them to loss rates and premiums for non-high-risk industries in Vermont, as well as corresponding rates in other New England states. While average incurred losses across all industries in Vermont have been relatively stable over the past five years, incurred losses within the identified high-risk occupations have been much higher and have shown significant volatility within the same time frame. In addition, workers' compensation costs in Vermont are generally 10



percent higher than those in Maine and New Hampshire. This is based, in large part, on the relative generosity of Vermont's benefit provisions. Of note, Vermont does not offset workers' compensation payments with the amount of pension or social security income a person receives.

## II. Reducing Workers' Compensation Costs

This report suggests the best way to reduce workers' compensation costs for high-risk occupations is to decrease the frequency and severity of claims, which is most effectively accomplished by promoting safety in the workplace. Other actuarial, regulatory, and practical methods are also explored as methods to alleviate high premiums for the high-risk industries. Some highlights are set forth below.

- Safety Programs and Premium Credits

This report evaluates existing safety programs in Vermont and neighboring states, and suggests the most impactful workplace safety programs utilize on-site verification of classroom and field lessons. This report recommends further consideration of expanding Vermont's existing Logger Education to Advance Professionalism ("LEAP") program to incorporate on-site certification by qualified forestry professionals, and the creation of a premium credit for LEAP-certified loggers.

- Customizing the Assigned Risk Differential

Assigned risk differential is the relative difference in loss experience between employers in the voluntary market and those in the assigned risk market. The statewide combined assigned risk differential in Vermont is 25 percent. Several factors make calculation of assigned risk differential on an individual classification basis difficult, but use of a statewide assigned risk differential creates rate inequities, particularly for high-risk occupations that have higher percentages of employees in the assigned risk market. This report suggests that one way to address these rate inequities may be to calculate one assigned risk differential for certain high-risk classifications, and another for all other class codes.

- Adjusting Voluntary Loss Costs for High-Risk Classifications

This report examines applying a uniform reduction or offset to loss costs for high-risk industries, which would lower premiums for employers in those industries, but result in a statewide premium deficiency. This premium deficiency could then be spread across all other industries, resulting in a nominal surcharge. This approach is advantageous because any adjustment would be done outside the core ratemaking process.

- Combining Class Codes for Log Hauling and Contract Trucking

When a class code's loss experience in Vermont is too small to be statistically reliable, it is blended with loss data from other states. In many cases, this blending mitigates the impact of poor loss experience, but in some cases, such as the case of log hauling, it produces a loss cost that is materially greater than would be indicated by Vermont data alone. To address the adverse impact of blending log hauling's Vermont loss data with out-of-state data, the Department suggests

combining log hauling with the newly created class of contract trucking. This would result in immediate relief for log haulers.

- Increasing Participation within High-Risk Classes

Since workers' compensation rates are determined by dividing expected losses and expenses by payroll, rates will be inflated if payroll statistics are understated. Essentially, employers who fulfill their obligation to provide workers' compensation insurance would subsidize employers who evade this obligation. The Department of Labor has increased enforcement efforts in recent years, but this report recognizes that it is also important to provide clearer direction to insurance companies about when independent contractors in high-risk industries may legitimately be excluded from an employer's payroll.

- Seasonal and Short-Term Policies

This report outlines the availability and pricing of seasonal and short-term workers' compensation policies. To enhance the affordability and availability of short-term policies, the Department suggests exploring alternative deposit or payment arrangements for such policies in the assigned risk market.

### III. Recommendations

This report makes a number of key recommendations for action or further study:

- The Governor should consider creating a task force to discuss and implement certain strategies explored in this report, including enhancements to the LEAP program for the logging industry, and safety certification programs in other high-risk industries.
- In consultation with the Governor's task force, the Department will work with NCCI to design one or more state-specific class codes to provide premium credits for LEAP-certified loggers.
- In consultation with the Governor's task force, the Department will work with NCCI to create a combined class code for log hauling and contract trucking.
- The Governor's task force should also study and consider:
  - implementing benefit offsets within the Vermont workers' compensation model for individuals receiving retirement and/or pension benefits;
  - customizing the assigned risk differential or adjusting voluntary loss costs; and
  - implementing alternative deposit premium requirements for short-term workers' compensation policies in the assigned risk market.

This report would not have been possible without the good and diligent work of Department staff members. We would like to recognize and thank those who played a central role: Phil Keller, Kevin Gaffney, Jill Rickard, and Aaron Kisicki. The Department would also like to thank Michael Snyder, Commissioner of the Department of Forests, Parks & Recreation, Sam Lincoln, Deputy Commissioner of the Department of Forests, Parks & Recreation, Anson Tebbetts, Secretary of the Agency of Agriculture, Food & Markets, Alyson Eastman, Deputy Secretary of the Agency of Agriculture, Food & Markets, Lindsay Kurrle, Commissioner of the Department of Labor, Steve Monahan, Director of Workers' Compensation & Safety for the Department of Labor, John

Herzfeld and Mary Ann McMahon of Milliman Consulting, Robin Fitzgerald and Scott Lefkowitz of Oliver Wyman Consulting, and the staff of NCCI for their important contributions.

We look forward to discussing this report with you. Please be in touch with any questions.

Sincerely,



Michael S. Pieciak  
Commissioner



Christina R. Rouleau  
Deputy Commissioner, Insurance Division

WORKERS' COMPENSATION RATES  
FOR CERTAIN HIGH-RISK OCCUPATIONS

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MICHAEL S. PIECIAK, COMMISSIONER  
VERMONT DEPARTMENT OF FINANCIAL REGULATION

JANUARY 15, 2018



## Introduction

Sections 18 and 20-22 of Act 80 of the 2017 legislative session<sup>1</sup> direct the Commissioner of the Department of Financial Regulation (“DFR” or “the Department”), in consultation with the Commissioner of the Department of Labor (“DOL”), the National Council on Compensation Insurance (“NCCI”), and other interested stakeholders to:

identify and study industries and occupations in Vermont that experience a high risk of workplace and on-the-job injuries and whose workers' compensation insurance is characterized by high premiums and few policyholders in the insurance pool. The industries and occupations addressed in the study shall include, among others, logging and log hauling, as well as arborists, roofers, and occupations in sawmills and wood manufacturing operations.

In particular, the Commissioner shall:

1. Examine differences in the potential for loss, premium rates, and experience and participation in the workers' compensation marketplace between the industries and occupations identified, and the average for all industries and occupations in Vermont;
2. Study potential methods for reducing workers' compensation premium rates and costs for high-risk industries and occupations, including risk pooling between multiple high-risk industries or occupations, creating self-insured trusts, creating voluntary safety certification programs, and programs or best practices employed by other states;
3. Model the potential impact on workers' compensation premiums and costs from each of the methods identified pursuant to subdivision (2) of this subsection;
4. Examine potential measures to encourage the creation of affordable seasonal and short-term workers' compensation policies and measures to reduce the cost of workers' compensation insurance coverage for small employers in seasonal occupations;
5. Examine potential mechanisms for joining with neighboring states to create a regional assigned risk pool for workers' compensation insurance and whether the creation of a regional assigned risk pool could reduce the cost of administering Vermont's assigned risk pool; and

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<sup>1</sup> Section 11 of Act 77 of the 2017 legislative session directed the Commissioner of Financial Regulation, in consultation with other stakeholders, to study and report on items 1-3 below for the same industries covered by this report plus agriculture and farming. That report was delivered to the Legislature on November 15, 2017. This report reiterates and builds upon the substance of the November 15 report, and includes additional findings with respect to items 4-6 below.

6. Examine whether any premium savings or reductions in costs could be realized if the assigned risk pool for workers' compensation was administered directly by DFR rather than through a third-party.

The Department has prepared this report in response to the Legislature's directive in Act

80. This report consists of five parts:

- Section I is an overview of the workers' compensation system in Vermont, including an explanation of how rates are made;
- Section II presents the Department's findings about the relative cost of workers' compensation insurance in the identified high-risk industries in Vermont and other New England states;
- Section III explores ways to reduce Vermont workers' compensation costs through a variety of measures, including enhanced safety programs and adjustments to the rate-making process;
- Section IV reports the Department's findings about seasonal and short-term workers' compensation policies, potential mechanisms for creating a regional assigned risk pool for workers' compensation insurance, and whether cost savings could be realized if the Vermont assigned risk pool was administered directly by DFR rather than through a third-party; and
- Section V sets forth the Department's recommendations for action or further study.

## I. An Overview of the Workers' Compensation System

### a. The Evolution of Workers' Compensation Insurance

Although insurance has existed for almost as long as commerce itself, workers' compensation insurance is a relatively recent invention. The first modern workers' compensation insurance system was created in Germany in 1871. The system was a response to the dramatic rise in workplace injuries and fatalities that occurred during the Industrial Revolution of the 19<sup>th</sup> century. Germany's workers' compensation laws provided monetary benefits as well as medical and rehabilitation benefits to insured workers. England adopted a similar workers' compensation system in 1897. In the United States, the first state-based workers' compensation laws were enacted in Wisconsin in 1911. Today, every state in the country provides some form of workers' compensation.<sup>2</sup>

The common feature of all modern workers' compensation laws is that they provide for "no fault" compensation. Prior to the enactment of workers' compensation legislation, to obtain financial relief, injured workers or their estates were required to sue an employer for negligence. This meant that the injured worker was faced with the challenge of proving that he or she had not contributed in any way to the injury and had not knowingly assumed the risks of the job, and that the injury was not the result of the carelessness of a fellow employee.<sup>3</sup> Modern workers' compensation laws abolish these common law defenses and provide for benefits to injured workers without regard to fault. In return, workers give up their rights to sue employers for negligence and

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<sup>2</sup> Guyton, G. P. (1999). A Brief History of Workers' Compensation. *Iowa Orthopaedic Journal*, 19, 106-110.

<sup>3</sup> Clayton, A. (2003/2004). Workers' Compensation: A Background for Social Security Professionals. *Social Security Bulletin*, 65(4), 2.

are required to accept the benefits specifically mandated by each state's workers' compensation laws.

All workers' compensation systems in the United States are funded by employers, either through the purchase of workers' compensation insurance or, less frequently, through self-insurance. State workers' compensation laws establish the amounts of both medical and indemnity benefits paid to injured workers. Medical benefits cover physician, hospital, and rehabilitation expenses. Indemnity benefits include wage replacement for the period during which the employee is out of work, lump sum payments for permanent disabilities, and death benefits.

#### b. Workers' Compensation Insurance in Vermont

Vermont's first workers' compensation laws were enacted in 1915.<sup>4</sup> Oversight of Vermont's current workers' compensation system is split between two state departments, DFR and DOL. DFR regulates the insurance companies that sell workers' compensation insurance to Vermont employers and approves rates in both the voluntary workers' compensation market and the assigned risk market. DOL oversees the laws that establish medical and indemnity benefits, administers the workers' compensation claims process, and enforces the requirement that employers provide workers' compensation insurance coverage for their employees.

Vermont's worker's compensation insurance market is divided into two sectors, the voluntary and assigned risk markets. Most employers purchase workers' compensation insurance in the voluntary market, which provides the most favorable rates because insurers aggressively

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<sup>4</sup> 1915, No. 164 (Adj. Sess.) ("An Act Relating to Compensation to Employees for Personal Injuries").

compete by offering discounts to employers with good safety records. The assigned risk (or residual) market serves employers that are not able to obtain coverage in the voluntary market. In some cases, employers in the residual market have poor safety records that make them unattractive to voluntary market insurers. New businesses without established safety records may also find it difficult to purchase insurance in the voluntary market.

Though workers' compensation premiums in certain high-risk industries remain relatively high, indemnity and medical loss trends in the Vermont workers' compensation system have improved in recent years. As a result, the Department approved workers' compensation loss costs for 2017 that were, on average, 7.9 percent lower than 2016 loss costs in the voluntary market, and rates that were 8.0 percent lower than 2016 rates in the assigned risk market.<sup>5</sup> This represented the largest rate decrease in more than eight years in Vermont. Additionally, in its recent filing for 2018, which is subject to the Department's review, NCCI proposed an additional 3.4 percent decrease in loss costs in the voluntary market, and an overall average 3.5 percent rate decrease in the assigned risk market.

#### c. Workers' Compensation Insurance Rate-Making

NCCI is a statistical agency composed of member insurers that is licensed by DFR to collect workers' compensation data from insurance carriers each year. NCCI analyzes the collected data to calculate annual loss costs for 36 states, including Vermont. Loss costs are estimates of future claim costs, and include both indemnity and medical benefits. NCCI then submits a "loss

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<sup>5</sup> Section I(c) below explains the difference between loss costs and rates.

cost filing” to each state’s insurance regulator. The loss cost filing contains a “loss cost indication” or “indicated change,” which is the recommended percentage change (up or down) in loss costs relative to current loss costs. As discussed more fully below, the overall change is then distributed to each of the individual rate (or job) classes.

Based on its actuarial analysis of NCCI’s loss cost filing, the regulator may approve a loss cost change different from that filed by NCCI. Assuming the state regulator approves the recommended change, NCCI publishes suggested (or “advisory”) loss costs for insurance carriers writing workers’ compensation in the voluntary market. Finally, individual insurance carriers may adjust the approved loss costs upwards or downwards and then add in their own overhead expenses and profit margin to arrive at the rates that form the basis of premiums charged to employers.

NCCI also files assigned risk rates in Vermont. Employers that cannot find coverage in the voluntary market are placed into a pool and are able to purchase workers’ compensation coverage at a fixed price. The profits and losses in the assigned risk market are shared with the voluntary market carriers via a pooling mechanism. If the assigned risk market sustains a loss, it is spread among the voluntary market, and each carrier’s allocation is based on their percentage of the voluntary market. If a state’s assigned risk pool runs a profit, that profit is spread among the carriers in the voluntary market.

i. Distribution of Rates to Individual Classes

In workers’ compensation insurance, a system of classification codes (“class codes”) exists to group employers with similar operations into the same rating categories. NCCI’s classification

system in Vermont consists of 610 class codes.<sup>6</sup> For example, class code 0036 is for dairy farmers and class code 8810 is for clerical workers. This segmentation of the market is done to create a fair basis for reviewing statistical loss experience and determining rates. If the classification system did not exist and the same rate was charged to all employers, higher risk classes would be undercharged relative to their risk and lower risk classes would be overcharged.

After estimating the overall loss cost change for the state, NCCI estimates the loss costs for each class code. The first step in this process is to identify the indicated loss cost change for each of the five major industry groups – manufacturing, contracting, office & clerical, goods & services, and miscellaneous. The next step is to distribute the overall industry group loss cost change to the individual classes within each of those industry groups. This is done based on a review of the actual loss experience of the various class codes.

## ii. Experience Rating

After the loss cost change is estimated for each class code, the next step is to calculate an individual employer's premium based on its actual loss experience. This is called "experience rating" and its purpose is to predict whether an individual employer is likely to develop loss experience that is better or worse than the loss experience of the average employer in the same classification. An employer's experience rating modification factor is typically based on the latest three years of its loss experience. If an employer's loss record is better than the average loss record in its class code, then its premium will likely be lower than the average for that code too. If an

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<sup>6</sup> There are 595 NCCI national class codes with 25 pending. Vermont currently has 15 NCCI state special class codes (for a total of 610), New Hampshire has 15 (for a total of 610), and Maine has 22 (for a total of 617).

employer's loss record is worse than the class average, then its premium will likely be higher than the average premium in the class.

### iii. The Role of Credibility in Rate-Making

NCCI's annual loss cost filing for each class code is essentially a prediction of that class's medical and indemnity losses for the coming year, based upon its historic loss experience for the preceding five years. Since Vermont is a small state, a class's prior loss experience is sometimes not statistically "credible," i.e., not large enough to constitute a statistically reliable basis for projecting its future losses. In such circumstances, the class's loss experience is blended with similar loss experience from other states to reach statistical credibility.<sup>7</sup>

It is sometimes suggested that one way to ameliorate high rates in Vermont's assigned risk market would be to base rates solely on Vermont loss experience, rather than blending Vermont data with loss experience from other states. There are two problems with this approach. First, as a risk pool grows smaller, the impact of catastrophic losses on rates grows greater, because such losses are spread out over a smaller base. This leads to volatility where rates may swing dramatically from year to year, making it difficult for an employer to estimate its future expenses.

Second, the blending of Vermont loss experience with loss experience from other states is as likely to benefit Vermont's assigned risk employers as it is to harm them. For example, for nonmechanized logging (class code 2702) and planing or molding mill operations (class code

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<sup>7</sup> Before out-of-state loss data is blended with Vermont loss data, the out-of-state data is adjusted so that it reflects the costs of Vermont's workers' compensation benefits rather than the benefit costs of the state from which the data was taken. For a discussion of Vermont benefits and how they impact workers' compensation rates, see Section II(b).

2731), the blending of Vermont loss data with loss data from other states mitigates the impact of poor loss experience in Vermont, resulting in loss costs that are materially less than would be produced if Vermont data alone was used. For log hauling and drivers (class code 2701), on the other hand, the use of out-of-state loss data produces a loss cost materially greater than would be indicated by Vermont data alone. For all other high-risk industries within the scope of this report, the blending of Vermont loss data with loss data from other states produces loss costs that are consistent with Vermont data, but that avoid the volatility in rates that would result from relying on Vermont loss data alone.<sup>8</sup>

## II. State and Regional Workers' Compensation Costs in High-Risk Occupations

The Department examined the differences in risk and premiums between the high-risk industries identified by the Legislature and the average for all industries and occupations in Vermont and neighboring states.

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<sup>8</sup> The class codes analyzed in this section are the riskiest of the industries included in the legislative mandate. The high-risk industries where the use of out-of-state loss data has no or little impact on Vermont rates, except to provide additional stability, are: tree pruning, spraying, and repairing (class code 0106); mechanized logging (class code 2709); saw mill operations (class code 2710); and roofing (class code 5551).

a. Comparison of Vermont High-Risk Classes to the Vermont Market as a Whole

Using loss and exposure information from the latest five policy periods, the Department’s outside actuaries reviewed the workers’ compensation experience for all industries combined in Vermont as well as for the following high-risk industries identified by the Legislature (agriculture and farming, logging and log hauling, arborists, roofers, and occupations in sawmills and wood manufacturing operations).

Table 1 below summarizes incurred loss rates (or total incurred losses per \$100 of payroll), reported claim frequency (or number of reported claims per \$1 million of payroll), and incurred loss severity (or total incurred losses per reported claim) for 2010-2014 in Vermont for (i) all industries combined, (ii) the identified high-risk industries, and (iii) all industries except for the identified high-class codes. It also identifies relativity (or the percentage by which each metric is higher for the identified high-risk industries than for non-high-risk industries).

<b>Table 1</b>			
<b>Loss and Exposure Statistics</b>			
<b>Year</b>	<b>Incurred Loss Rate</b>	<b>Reported Frequency</b>	<b>Incurred Severity</b>
<b>All Industries Combined</b>			
2010	1.68	0.29	58,464
2011	1.71	0.27	62,970
2012	1.69	0.25	66,659
2013	1.68	0.25	66,870
2014	1.66	0.25	66,383
<b>Total</b>	<b>1.68</b>	<b>0.26</b>	<b>64,227</b>
<b>High-Risk Industries</b>			
2010	5.63	0.82	68,967
2011	7.19	0.88	81,470
2012	4.04	0.60	66,899
2013	8.02	0.72	111,643
2014	8.11	0.77	105,389

<b>Table 1</b>			
<b>Loss and Exposure Statistics</b>			
<b>Year</b>	<b>Incurred Loss Rate</b>	<b>Reported Frequency</b>	<b>Incurred Severity</b>
Total	6.68	0.76	88,514
<b>All Industries Except High-Risk</b>			
2010	1.63	0.28	58,111
2011	1.65	0.26	62,247
2012	1.66	0.25	66,652
2013	1.60	0.25	65,214
2014	1.57	0.24	64,722
Total	1.62	0.26	63,345
Relativity of High-Risk to Non-High-Risk Industries	412%	295%	140%

As shown in Table 1, the average incurred loss rate, reported frequency, and incurred severity have been relatively stable in recent history for all industries combined and for the non-high-risk industries, but very volatile for the high-risk industries. The incurred loss rate for the high-risk industries has ranged from a low of 4.04 to a high of 8.11 with a five-year average of 6.68. Similar volatility can be seen in the reported frequency and incurred severity statistics. Part of this volatility is due to the size of the high-risk industries relative to the overall market in Vermont. Based on payroll, these high-risk classes account for only 1.22 percent of the workers' compensation industry in Vermont. Thus, a few large losses can skew the totals significantly.

In addition, the incurred loss rate for high-risk industries is over four times higher than that of all other industries, reported claim frequency is almost three times higher, and claim severity is almost one and a half times higher. The loss experience for the high-risk classes is not only very volatile, but is worse than the loss experience for all other industries in every single year studied.

b. Comparison of Vermont High-Risk Classes to Neighboring States

Since workers' compensation benefits vary from state to state, cross-state premium comparisons can be difficult. For example, if State X has higher statutory wage replacement benefits than State Y, then State X's comparatively higher premiums for a job class (e.g., clerical workers) may be attributable to State X's more generous benefit structure, rather than clerical workers being injured more frequently or severely in State X than State Y. Generally, workers' compensation costs in Vermont are 10 percent higher than costs in Maine and New Hampshire. This is largely based on the relative generosity of Vermont's benefit provisions compared to those of its neighboring states.

NCCI compiled Table 2 below, which compares benefit provisions in all New England states except Massachusetts, where NCCI is not involved in rate-making or in administration of the assigned risk market.

<b>Table 2 Benefit Comparison by State</b>					
<b>Benefit</b>	<b>CT</b>	<b>ME</b>	<b>NH</b>	<b>RI</b>	<b>VT</b>
Rate of compensation	75% of spendable (net) wage	66 2/3% of gross wages	60% of gross wages	75% of pre-injury wages	66 2/3% of gross wages
Maximum weekly benefit	\$1,292 (100% of SAWW)  \$1,063 for PPD, TPD <sup>9</sup>	\$789.35 (100% of SAWW)	\$1,508 (150% of SAWW)	\$1,154 (120% of SAWW)	\$1,259 (150% of SAWW)
Waiting period/retroactive period	3/7	7/14	3/13	3/-	3/10

<sup>9</sup> PPD means permanent partial disability; TPD means temporary partial disability.

<b>Table 2</b>					
<b>Benefit Comparison by State</b>					
<b>Benefit</b>	<b>CT</b>	<b>ME</b>	<b>NH</b>	<b>RI</b>	<b>VT</b>
COLA	Fatal, PTD	-	PTD, TTD <sup>10</sup> (for TTD, initial adjustment after 3 years)	Fatal, PT, Partial incapacity	All benefit types
Offsets	-	WC benefit reduced by retirement benefit and/or pension	-	Retirement offsets for all benefit types	-

When comparing benefit provisions across New England states, there are three in Vermont that stand out as being among the most generous in the region. First, the maximum indemnity (lost time) benefit in Vermont is 150 percent of the state’s average weekly wage (“SAWW”). New Hampshire also has a maximum indemnity benefit of 150 percent of SAWW, but Rhode Island caps its benefits at 120 percent of SAWW, and Connecticut and Maine cap their benefits at 100 percent of SAWW. Second, Vermont provides a cost of living adjustment (“COLA”) for all income benefits, regardless of claim type. Maine does not have a COLA provision and Connecticut, New Hampshire, and Rhode Island all place limitations on COLAs. Finally, both Maine and Rhode Island offset an injured worker’s benefits by the amount of income he or she receives from a pension or social security, a limitation that can significantly reduce the cost of long-term workers’ compensation claims. Vermont (along with Connecticut and New Hampshire) does not impose a benefit offset.

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<sup>10</sup> PTD means permanent total disability; TTD means temporary total disability.

Offsetting a person's workers' compensation benefits with the amount of retirement or social security income he or she receives would eliminate any duplication of benefits. As described below, the Department recommends the establishment of a task force to further study some of the methods discussed in this report. The Department believes a retirement benefit offset is an area of potential focus for the task force.

Even accounting for Vermont's generous benefits, there are high-risk class codes in Vermont that exceed their counterparts in the other two states by greater than the 10 percent benefit differential. In nonmechanized logging (class code 2702), for example, Vermont's loss cost is \$32.99 per \$100 of payroll, whereas New Hampshire's is \$20.55 and Maine's is \$12.68. In mechanized logging (class code 2709), Vermont's loss cost \$12.68, while New Hampshire's is \$9.19 and Maine's is \$9.00. For log hauling and drivers (class code 2701), Vermont's loss cost is \$12.10, as opposed to \$8.12 in New Hampshire and \$10.18 in Maine.<sup>11</sup>

### III. Reducing Workers' Compensation Costs

#### a. Safety Programs

Two of the most effective ways to reduce workers' compensation costs for high-risk industries are to decrease the frequency of claims (i.e., have fewer claims) and decrease the severity of claims (i.e., have claims cost less). For example, a 20 percent reduction in claim frequency for high-risk classes (i.e., a reduction in frequency from an average of 0.76 to 0.60) would result in

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<sup>11</sup> It is important to remember that these are loss costs, not rates. To arrive at final rates for these class codes in the voluntary market, insurers add in their anticipated expenses and target profit margin. Final rates in the assigned risk market include an expense and profit component, as well as NCCI's prescribed 25 percent assigned risk differential. The assigned risk differential will be discussed in Section III(c).

approximately 16 fewer claims in a year. Such a reduction would produce savings of about \$1.4 million per year for the high-risk classes, equating to an approximate 19.5 percent reduction in rates.<sup>12</sup>

Proper education and training, combined with effective workplace safety programs, have been proven to decrease workers' compensation claim frequency and severity. Education and training in high-risk occupations are necessary to establish basic competence for workers to understand safe and effective worksite practices. Education and training may not have a significant impact on worksite safety, however, unless they are combined with workplace safety programs and verification that employers are following safety best practices.

Many high-risk professions have developed industry-specific training and professional development programs that aim to instill a culture of professionalism and safety for employers and employees alike. For example, the construction industry in Vermont has in place various workplace safety programs, many of which require an employee to take a course and/or obtain certification before performing certain kinds of work. Some examples are Traffic Control Technician training courses (required before directing traffic in and around work zones) and Mine Safety and Health Administration courses (required before performing work in a gravel pit or quarry), each of which is offered and/or administered by The Associated General Contractors of Vermont.

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<sup>12</sup> Policies in the assigned risk market are subject to the 25 percent assigned risk market differential, so those policies would see a slightly higher premium savings, assuming the reduction is evenly distributed amongst the high-risk classes. The 19.5 percent reduction would consist of approximately an 18.7 percent reduction in rates for those in the voluntary market, and a 23.3 percent reduction in rates for those in the assigned risk market. This calculation assumes each claim cost \$88,500, which is a figure provided by the Department's outside actuaries based on NCCI average claim cost.

The Department focused its review on the logging industry, which has some of the highest risks of workplace injuries and highest workers' compensation premiums in the state. This report contains an overview of one logging safety and training program currently in place in Vermont and various logging safety programs in neighboring states, and sets forth recommendations for enhancement of the Vermont program.

i. Safety Programs in Vermont

The Logger Education to Advance Professionalism (“LEAP”) program is a workplace safety program that aims to provide necessary education and training for Vermont’s loggers to work safely, efficiently, and in an environmentally conscientious manner.<sup>13</sup> Provisional and full LEAP certifications are available to Vermont forestry workers after completion of at least 24 hours of program curriculum training. Continuing education requirements must also be met to maintain full LEAP certification. LEAP certification meets or exceeds the requirements for certification by the Vermont Sustainable Forestry Initiative, which is based on the premise that responsible forest management behavior and sound business practices in the logging industry can complement one another.

ii. Safety Programs in Other States

Other New England states with agricultural and forestry-based economies have similar safety programs. These programs, like the LEAP program, are designed to reduce workers' compensation claims by training workers in safe workplace practices.

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<sup>13</sup> See <http://www.vtleap.com/>. LEAP is a forestry-specific nonprofit educational organization.

In Maine, high-risk worker safety programs are administered both by the state and through private industry organizations. Maine’s Department of Labor administers a voluntary safety outreach program, SafetyWorks!, that aims to reduce job-related injuries and deaths across all job classifications.<sup>14</sup> SafetyWorks! is funded in part by a state safety education fund established through annual assessments of workers’ compensation insurers, and group and individual self-insured employers.

Maine’s logging industry also sponsors several training and certification programs. The Professional Logging Contractors of Maine (“PLC”) administers two such programs. The Northeast Master Logger Certification Program (“NEMLC”) was established in 2000, and includes review of logging employer standards and practices coupled with field inspection of harvested sites.<sup>15</sup> Logging employers may obtain certification upon successful completion of the program. Master logger programs based on the NEMLC model have been adopted in other New England and upper Midwest states, as well as several Canadian provinces and Japan. PLC started a mechanized logger training program in 2017 in partnership with three Maine community colleges. The new program provides a path for mechanized logging certification for students entering the industry.

Maine’s Certified Logging Professional (“CLP”) program provides a proven avenue for logging safety training.<sup>16</sup> The CLP program was started in Maine in 1991, following a period in which workers’ compensation rates increased significantly and many insurers left the market. The

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<sup>14</sup> See <http://www.safetyworksmaine.gov>.

<sup>15</sup> See <http://maineloggers.com/about-the-plc/master-logger-certification>.

<sup>16</sup> See <http://www.clploggers.com>.

educational component of the CLP program is similar to Vermont’s LEAP program, but the CLP program also includes a field interview component that will be described in the next section. The CLP program is funded by the Maine Tree Foundation, a private non-profit organization, and claims to have achieved an overall rate reduction of 59 percent for nonmechanized loggers since its inception.<sup>17</sup> Participation in the CLP program is reportedly 100 percent for nonmechanized loggers and nearly universal for mechanized loggers.

New Hampshire’s Timberland Owners Association (“NHTOA”) administers the Professional Loggers Program, a voluntary certification program similar to those found in Vermont and Maine.<sup>18</sup> NHTOA notes that most large insurers require that loggers and foresters be certified. New Hampshire’s Professional Logger’s Program does not appear to have an on-site verification component.

### iii. On-Site Verification

Although Vermont’s LEAP program is similar in content to logging education programs in other New England states, it does not include, as Maine’s CLP program does, an on-site verification component. Maine’s CLP program requires four days of classroom and field training, as well as a subsequent daylong field interview that examines, among other things, whether employees are using appropriate protective gear, whether first-aid kits meet applicable safety standards, and whether mechanical equipment like chainsaws are safe and being used properly. Until an employer completes the field interview, it is not eligible for one of Maine’s state special

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<sup>17</sup> Certified Logging Professional Program Summary (as of July 2017), at <http://www.clploggers.com/Program%20Summary%20July%202017.pdf>

<sup>18</sup> See <https://www.nhtoa.org/19-professional-logger-program.html>.

rating classes for certified loggers. CLP recertification is required every two years and consists of eight hours of continuing education and a follow-up field interview. The required on-site verification may help explain why the CLP program has led to a significant reduction in logging losses and an attendant significant reduction in premiums. As one longtime CLP administrator told the Department, “nothing changes until somebody goes in the woods and confirms that the lessons taught in the classroom are being put into practice.”

#### iv. Premium Credits

The Department found that certain other states offer workers’ compensation premium credits ranging from two percent to 25 percent to employers that engage in certified safety measures. There is wide variation in the amount of premium credits offered by states, administration of safety programs, and eligibility requirements. Programs are summarized in Table 3, attached to this report as Addendum A. It should be noted that this table does not present every detail of every program. Premium credits may provide an incentive to create a safe work environment and create an intuitive connection between premium rates and propensity for losses.

In any such premium credit program, a nominal increase to loss costs of non-participating employers would be initially be required to ensure that overall premium levels remain adequate. For example, if nonmechanized loggers and mechanized loggers were provided a 25 percent reduction in premium due to satisfactory completion of safety programs, then premium for all other employers in the workers’ compensation risk pool would initially need to increase by slightly less than 0.1 percent to maintain the same level of overall statewide premium. Once the savings attributable to participation in the safety programs become known (approximately four to six years

after implementation), the size of the premium credit may need to be adjusted to reflect the actual reduction in loss experience for the class.

Implementation of a premium credit may entail unintended market consequences for some employers and will thus need to be carefully monitored. For example, insurers may question whether the reduction in risk achieved by an employer's implementation of safety measures justifies the reduced premium they pay. This reaction is especially likely to occur in the first years of the safety program, before the actual loss savings realized by the program are known. In such cases, an employer may be unable to obtain coverage in the voluntary market. If they obtain coverage, instead, in the assigned risk market, the 25 percent assigned risk differential would offset the 25 percent premium reduction yielded by the credit.<sup>19</sup>

One way to mitigate this potential adverse consequence, according to the Department's actuaries, is to reduce the assigned risk differential for assigned risk market employers who participate in a safety program. If the assigned risk differential is reduced by half for assigned risk market employers who complete a safety program, such employers will still see a significant net reduction in their premium. In addition, many states engage in some form of schedule rating, whereby underwriter judgment regarding safety practices may result in premium debits and credits. Specific criteria and ranges for debits and credits vary by state, but typically allow for debits or credits of up to five percent for safety devices and an additional five percent for safety management. However, schedule rating is typically not permitted for assigned risk policies.

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<sup>19</sup> The assigned risk differential, which is discussed more fully in Section III(c), is an additional premium charge assessed to assigned risk employers that is based on the relative loss experience of the assigned risk market as a whole compared to the relative loss experience of the voluntary market as a whole.

As described in more detail below, the Department recommends the establishment of a task force to develop similar certified safety programs. The task force should also conduct additional research regarding the efficacy of these programs to set appropriate premium credit levels. Vermont may wish to allow certain high-risk classes to realize larger premium credits, as a means of further incentivizing these high-risk employers to increase their focus on safety. As part of any safety program, on-site verification is essential to convince workers' compensation insurers to award premium credits for employer participation in the program.

b. Special Purpose Funds

Some states use special purpose funds to reduce the cost of premiums in high-risk industries. One example is Michigan's "Logging Industry Compensation Fund," which reimburses carriers for a portion of the claims payments they make for severe injuries sustained by workers in nonmechanized logging. The Michigan program is funded through assessments on all insurance carriers and self-insured employers in the state. Insurers build this assessment into their rates for the entire workers' compensation risk pool, thus spreading the cost of the fund to all insured and self-insured employers throughout the state.

Since the most severe logging losses are subsidized by the Michigan special fund, the result is significant rate relief to logging employers. The assigned risk rate in Michigan (effective January 1, 2018) is \$8.69 per \$100 of payroll. For comparative purposes, Vermont's assigned risk rate (effective April 1, 2017) for nonmechanized logging is \$51.37 per \$100 of payroll. Other cost drivers (e.g., different benefit structures, a larger risk pool for nonmechanized loggers in Michigan than Vermont) are likely partially responsible for the rate differential between the two states.

However, the Department believes that the special purpose fund is a significant driver of Michigan's lower premium rates for loggers.

Although the Michigan fund is restricted to severe losses in nonmechanized logging, a similar fund in Vermont could also include allied high-risk industries such as mechanized logging, log hauling and drivers, sawmill operations, and woodenware manufacturing. Given the interdependence of these industries (e.g., the fact that sawmills and woodenware manufacturers depend upon a thriving logging industry for their raw material), a combined fund makes sense. Given that all of these industries combined represent less than one percent of Vermont workers' compensation premium, the assessment needed to create the fund is likely to be nominal if spread over the entire risk pool.

c. Customizing the Assigned Risk Differential

As noted above, employers in the assigned risk market generally have materially higher loss experiences than employers in the voluntary market. The higher loss experience for employers in the assigned risk market is addressed, in part, through what is called the "assigned risk differential." The assigned risk differential represents the relative difference in loss experience, on a combined statewide basis, between employers in the voluntary market and employers in the assigned risk market over multiple years. The current assigned risk differential in Vermont is 25 percent, meaning that assigned risk loss costs are 25 percent greater, on average, than voluntary market loss costs.

In a perfect world, the assigned risk differential would be calculated individually for each class code, just as rates are calculated individually for each class. However, membership in the

assigned risk market is fluid. Employers move back and forth between the voluntary market and the assigned risk market from one year to the next. Moreover, the assigned risk market itself expands and contracts over time based on the willingness of the insurance industry to take on risk as state and national economic conditions change. Given the variability in the number of employers in the assigned risk market from year to year, the annual calculation of an assigned risk differential on an individual class code basis is not practicable.

Nevertheless, the use of a statewide assigned risk differential can create clear rate inequities for certain classes. This is best illustrated using an example where the assigned risk differential in a state is 25 percent, and there is a single classification where all employers in the classification are in the assigned risk market. In this situation, the loss cost calculated for that classification already reflects the higher risk of employers in the class. Given that there is a 100 percent assigned risk market share in that classification, the addition of a 25 percent assigned risk differential surcharge will effectively overcharge those employers by 25 percent. In this scenario, the employers in the classification with 100 percent of its members in the assigned risk market are paying more than they should and effectively subsidizing classes with lower employer membership in the assigned risk market.

Overall, the assigned risk market share in Vermont has been approximately 11 percent. Assigned risk employers in classifications with a high assigned risk market share are likely to require a lower assigned risk differential than the statewide average, while assigned risk employers in classifications with a lower assigned risk market share are likely to require a higher assigned risk differential than the statewide average. As illustrated in Table 4 below, many of the

classifications included in this study already have most of their risks – either by policy count or premium volume – in the assigned risk market.

<b>Table 4</b>		
<b>Percentage of Premium in Assigned Risk Market</b>		
Job Class	% of Total in Assigned Risk Market (7/1/13-6/30/14)	
	Policy Count	Premium Volume
Logging or Tree Removal: Log Hauling & Drivers	50%	54%
Logging or Tree Removal: Nonmechanized Operations	85%	54%
Logging or Tree Removal: Mechanized Equipment Operators	68%	52%
Saw Mill	57%	10%
Tree Pruning, Spraying, Repairing- All Operations & Drivers	40%	9%
Planing or Molding Mill	29%	35%
Roofing: All Kinds & Drivers	63%	24%
Farm: Orchard or Grove & Drivers	60%	33%
Farm: Berry or Vineyard & Drivers	48%	37%
Stable or Breeding Farm & Drivers	54%	28%
Farm: Gardening- Market or Truck & Drivers	39%	11%
Farm: Field Crops & Drivers	48%	37%

One way to address the potential overcharging of employers in the assigned risk market would be to calculate one assigned risk differential for the loss experience of the high-risk class codes under consideration in this study and another assigned risk differential for all other Vermont class codes. The probable impact of this adjustment would be to lower assigned risk rates for the high-risk class codes and increase assigned risk rates for the remaining classifications. Although customizing the assigned risk differential in this way may lead to higher premiums for certain classifications (i.e., those with most of their employers in the voluntary market), it eliminates the

potential unfairness of having a uniform assigned risk differential for all classifications, regardless of the extent to which their employers participate in the assigned risk market.

Table 5 below sets forth a simple model showing the impact of customizing the assigned risk differential to reflect the loss experience of class codes with most employers in the assigned risk market.

<b>Table 5</b>					
<b>Effect of Customizing Assigned Risk Differential</b>					
	Assigned Risk Premium without Differential	Current Differential	Current Assigned Risk Premium	Revised Differential	Revised Assigned Risk Premium
High-Risk Class Codes	\$1,200,000	25%	\$1,500,000	15%	\$1,380,000
All Other Class Codes	\$12,400,000	25%	\$15,500,000	26%	\$15,620,000
Total Statewide	\$13,600,000	25%	\$17,000,000	25%	\$17,000,000

In this model, the assigned risk differential is reduced from 25 percent to 15 percent for the high-risk classifications, thus generating lower overall assigned risk premium. The assigned risk differential is increased for the remainder of the market from 25 percent to 26 percent to ensure that the overall assigned risk premium need is satisfied.<sup>20</sup>

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<sup>20</sup> One advantage of this proposal is that a small increase in the assigned risk differential for all other classes (25 percent to 26 percent) supports a large decrease to the assigned risk differential for the high-risk classifications (25 percent to 15 percent). However, since this model is offered for illustrative purposes only, precise measurements would need to be made to determine a more accurate value of the potential impact.

Customization of the assigned risk differential could have a significant impact on rates for the high-risk occupations considered in this study. Any potential change in the ratemaking process, however, would require careful actuarial modeling by NCCI to ensure that the proposed solution is feasible. The Department believes that this is an area that warrants further study.

d. Adjusting Voluntary Loss Costs

An alternative to customizing the assigned risk differential for the class codes under consideration would be to apply a uniform reduction (or offset) to the loss costs calculated by NCCI for those classifications. This would result in lower premiums for employers in the selected high-risk classifications in both the voluntary market and the assigned risk market. The reduction of NCCI's calculated loss costs in these classifications would result in a premium deficiency on a statewide basis. If this deficiency were spread (or socialized) across all other class codes, however, the surcharge imposed on voluntary and assigned risk employers in the rest of the workers' compensation risk pool would be nominal. An advantage of this approach is that the loss cost reduction in the high-risk class codes and the counter-balancing surcharge in all other class codes would be applied after NCCI had calculated loss costs for each classification. In this way, the adjustment would be outside of the core ratemaking process.

The Department's actuaries modeled the impact of reducing voluntary loss costs (and, therefore, assigned risk rates) in the forestry industries. To fund a 25 percent voluntary loss cost reduction across a broad range of forestry classifications, a surcharge of less than seven tenths of one percent would need to be imposed on all other classifications in the workers' compensation

risk pool.<sup>21</sup> If the 25 percent reduction were restricted to log hauling, nonmechanized logging, mechanized logging, and sawmill operations, the surcharge imposed on all other classifications would be even smaller, i.e., two tenths of one percent. With this approach, employers in selected high-risk classifications would benefit at a very small cost to other employers in the state.<sup>22</sup>

e. Combining Class Codes for Log Hauling and Contract Trucking

As noted in Section I(c)(iii), when a class code's loss experience is not large enough to constitute a statistically reliable basis for predicting future losses, standard actuarial rate-making procedures require it to be blended with similar loss experience from other states to reach statistical credibility. Since Vermont is a small state, the blending of Vermont data with loss data from other states occurs in many of the high-risk classifications that are the subject of this report. In some cases, such as nonmechanized logging (class code 2702) and planning or molding mill operations (class code 2731), this blending mitigates the impact of poor loss experience in Vermont, resulting in loss costs that are materially lower than would be produced if Vermont data alone was used. In the case of log hauling and drivers (class code 2701), however, the use of out-of-state loss data produces a loss cost materially greater than would be indicated by Vermont data alone. Log hauling is a very small class with extremely good loss experience. The loss cost indicated by actual loss

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<sup>21</sup> The 14 classifications considered in this test were: 0106 (tree pruning, spraying, repairing), 2701 (log hauling and drivers), 2702 (nonmechanized logging), 2709 (mechanized logging), 2710 (sawmill), 2714 (plywood and veneer manufacturing), 2731 (planning or molding mill), 2735 (furniture stock manufacturing), 2841 (woodenware manufacturing), 2915 (veneer manufacturing and product processing), 2916 (veneer product manufacturing), 4206 (ground wood processing), 4207 (pulp manufacturing – chemical process), and 4239 (paper manufacturing).

<sup>22</sup> Adjusting voluntary loss costs for high-risk classifications entails the same potential adverse consequence that providing safety credits does, namely that insurers will reevaluate the risk posed by voluntary market employers with marginal safety records and move those employers into the assigned risk market. Assuming this occurs, however, it is likely to be mitigated by the fact that in class codes 2701, 2702, 2709, and 2710, a majority of policies are already in the assigned risk market. *See* Table 5, above.

experience in Vermont is \$1.00 per \$100.00 of payroll. Because Vermont data for log hauling is blended with out-of-state data to achieve statistical credibility, however, the proposed 2018 loss cost for the class is \$11.36.<sup>23</sup>

To address the adverse impact of blending log hauling's low Vermont losses with less favorable out-of-state loss data, the Department's actuaries suggest combining log hauling (class code 2701) with contract trucking (class code 7219). Contract trucking is a newly-created class with Vermont loss data that approaches full credibility.<sup>24</sup> The proposed 2018 loss cost for contract trucking is \$9.25. If log hauling and contract trucking were combined, log haulers would see an immediate loss cost reduction from \$11.36 to \$9.25 or less, a reduction of approximately 20 percent. Just as importantly, should there be a large claim from a log hauler, the impact on the combined classification will be very small because it has such a substantial body of data. The impact of a \$1 million loss on the combined class code is estimated by the Department's actuaries to result in a loss cost increase of only approximately two percent. The Department recommends moving forward with this combined class code.

f. Risk Pooling

As required by Acts 77 and 80, the Department examined the feasibility of risk pooling (i.e., the sharing of loss experience) within high-risk industries. As noted above, the high-risk classes discussed in this report represent only 1.22 percent of the overall workers' compensation

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<sup>23</sup> Although the indicated loss cost for log hauling, based on Vermont data alone, is only \$1.00, a single \$1 million loss would increase the indicated Vermont loss cost to almost \$30.00. This example illustrates the volatility that would be likely to occur in a small class if Vermont loss costs were based on Vermont data alone.

<sup>24</sup> Code 7219 (contract trucking) was created out of prior codes 7228 (short-haul trucking) and 7229 (long-haul trucking). The combined five-year Vermont payroll for contract trucking is \$472.5 million, as compared to a five-year Vermont payroll of \$5 million for log hauling.

market in Vermont. Individual classes, such as mechanized or nonmechanized logging, represent an even smaller share. Given the small size of most of the high-risk classes considered in this study, their loss experiences are inherently volatile. This means that a single catastrophic loss in a class like nonmechanized logging can have a disproportionate impact on the premium for that class. Table 6 below shows the effect of pooling loss experience within high-risk classes on reducing this volatility. By spreading catastrophic losses out over a larger risk pool, such sharing of loss experience reduces premiums for the adversely impacted classes. However, since risk pooling does not reduce overall losses in the workers' compensation market, but rather merely redistributes them, loss sharing will have the effect of increasing premiums for some high-risk groups while reducing premiums for others. As demonstrated in Table 8 below, farming class codes would generally receive premium increases while logging class codes would generally receive premium decreases.<sup>25</sup>

<b>Table 6 Estimated Impact of Risk Pooling on Premiums in High-Risk Classes</b>		
<b>Class Code</b>	<b>Premium Increase (Decrease) in Voluntary Market</b>	<b>Premium Increase (Decrease) in Assigned Risk Market</b>
Farm: Gardening- Market or Truck & Drivers	133%	192%
Farm: Florist & Drivers	111%	165%
Farm: Poultry or Egg Producer & Drivers	95%	144%
Farm: Field Crops & Drivers	61%	103%
Farm: Nursery Employees & Drivers	54%	93%
Farm: Berry or Vineyard & Drivers	50%	88%
Farm: Dairy & Drivers	39%	75%
Woodenware Manufacturing NOC	31%	65%
Farm: Cattle or Livestock Raising NOC & Drivers	1%	26%
Farm: Fish Hatchery & Drivers	-	-
Farm: Animal Raising & Drivers	-	-

<sup>25</sup> One challenge that may arise in implementing this idea is determining which residual market classes to include in a risk-sharing pool.

<b>Table 6 Estimated Impact of Risk Pooling on Premiums in High-Risk Classes</b>		
<b>Class Code</b>	<b>Premium Increase (Decrease) in Voluntary Market</b>	<b>Premium Increase (Decrease) in Assigned Risk Market</b>
Saw Mfg	-	-
Building or Roofing Paper or Felt Preparation- No Installation	-	-
Farm Machinery Dealer- All Operations & Drivers	-	-
Stable or Breeding Farm & Drivers	-	-
Farm: Orchard or Grove & Drivers	(23%)	(3%)
Saw Mill	(27%)	(8%)
Farm Machinery Operation- By Contractor & Drivers	(29%)	(10%)
Logging or Tree Removal: Log Hauling & Drivers	(48%)	(34%)
Logging or Tree Removal: Mechanized Operations	(50%)	(37%)
Tree Pruning, Spraying, Repairing- All Operations & Drivers	(59%)	(49%)
Roofing- All Kinds & Drivers	(60%)	(49%)
Logging or Tree Removal- Nonmechanized Operations	(81%)	(76%)

Given the small size and volatility of Vermont’s high-risk pool, and the significant fluctuations in premium demonstrated in Table 8 above, pooling within high-risk industries would have a dramatic impact on premium that would produce clear “winners” and “losers.” Accordingly, all factors should be closely examined before considering this approach.

g. Self-Insured Trusts

Vermont employers can satisfy their statutory obligation to provide workers’ compensation for their employees either by purchasing a commercial insurance policy in the voluntary or assigned risk market or by self-insuring.<sup>26</sup> Self-insurance is a method of risk management where

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<sup>26</sup> 21 V.S.A. § 687(a).

an employer assumes the financial responsibility for its potential losses and sets aside funds sufficient cover what those losses are projected to be.<sup>27</sup> An employer that wishes to self-insure must file an application with DOL, which is required to consult with DFR before acting on the application.<sup>28</sup> Because the financial resources needed to self-insure are significant, only a handful of corporations in Vermont manage their workers' compensation risk in this manner.<sup>29</sup>

Although Vermont law does not currently permit self-insured employer trusts, it does authorize the creation of an analogous entity known as a self-insured employer association.<sup>30</sup> Self-insured associations are tools for companies that want to assume some control over their workers' compensation losses but do not have the size or financial capacity to self-insure. They are intended to benefit their members by mitigating costs, limiting accidents through loss prevention and safety trainings, providing claims management, and, when premiums exceed losses, returning dividends to each employer.<sup>31</sup> Self-insured employer associations may also be exempt from paying Vermont's two percent premium tax.<sup>32</sup>

The benefits offered by self-insured associations are potentially applicable to self-insured trusts as well. The Department is not aware of whether the high-risk industries considered in this

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<sup>27</sup> An employer that self-insures typically purchases stop loss insurance from a commercial insurer. Stop loss insurance protects self-insured employers from unexpectedly large losses by reimbursing them for claims above an agreed-upon amount.

<sup>28</sup> 21 V.S.A. § 687(a)(3).

<sup>29</sup> Approximately nine corporations currently self-insure their workers' compensation needs in Vermont.

<sup>30</sup> 21 V.S.A. § 687a. There are presently no self-insured employer associations operating in Vermont. The last self-insured association operating in Vermont was the Vermont Oil Heat Institute Workers' Compensation Self-Insurance Corporation ("VOHI"). VOHI was in operation for only a few years, from 1995-1998, insuring workers' compensation for Vermont oil dealers. The entity sustained larger than expected losses early on and discontinued writing business.

<sup>31</sup> 21 V.S.A. § 687a(d)(1).

<sup>32</sup> According to 32 V.S.A. § 8551, premium taxes must be paid by "[a] domestic insurance company, association, or society... doing business in this State." (Emphasis added). Whether the word "association" in § 8551 applies to self-insured employer associations (as opposed, for example, to fraternal benefit associations) is unclear.

study have an interest in forming self-insured trusts and is further concerned that the high-risk industries largely would not have the financial capacity to make self-insured trusts viable.

Though the Department views self-insured trusts as impractical at this time, if the Legislature does wish to pursue enabling legislation, the Department makes the following recommendations with respect thereto:

- Exempt members' contributions to self-insured trusts from Vermont's premium tax. Imposing a premium tax on member contributions would be a significant disincentive to the formation of self-insured trusts.
- Eliminate the requirement of the current law that a self-insured association must have "been in existence in this state for five or more continuous years" before it can assume its members' risks.<sup>33</sup> While this requirement appears to have been intended to ensure the stability of a self-insured association, the same goal can be met by requiring a self-insured association or trust to submit its operating plan, member agreements and stop-loss or reinsurance agreements to either DOL or DFR for approval.
- Allow the formation of trusts that pool the losses of different high-risk class codes. According to the Department's actuarial consultant, self-insured employer trusts typically need about \$2 million in contributions from their members to be financially viable. With the exception of roofing (class code 5551) and dairy farming (class code 0036), none of the high-risk industries identified by the Legislature meet this premium

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<sup>33</sup> 21 V.S.A. § 687a(a).

threshold.<sup>34</sup> Although risk sharing may not be attractive to high-risk industries with relatively low loss costs (*see* discussion in Section III(e) above), allowing small industries with high loss costs such as mechanized and nonmechanized loggers, log haulers, and woodenware manufacturers to pool their losses and contributions may make self-insurance financially feasible, thus allowing them to realize the benefits of this approach.

#### h. Increasing Participation within High-Risk Classes

A final approach to reducing workers' compensation costs in the identified high-risk classes is to increase employer participation in those classes. The Department believes that participation by employers in the workers' compensation market will increase as rates decrease based on improved workplace safety education and training. However, since rates are determined by dividing estimated losses and expenses by estimated payroll, rates will be inflated if all losses are included in the numerator of this calculation, but payroll statistics are understated in the denominator. Essentially, employers that fulfill their obligation to provide workers' compensation insurance would subsidize employers that evade this obligation.

DOL has made significant progress in the last decade in improving workers' compensation compliance. DOL has enhanced the visibility and user-friendliness of its web-link for reporting suspected workers' compensation fraud. In addition, DOL increased its investigations of employers alleged to lack of coverage in each year between 2014 and 2016.<sup>35</sup> Most investigations

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<sup>34</sup> In the 2013-2014 policy year, for example, aggregate premiums were \$197,000 for log haulers and drivers (class code 2701), \$202,000 for nonmechanized loggers (class code 2702), \$455,000 for mechanized loggers (class code 2709), and \$506,000 for woodenware manufacturing (class code 2841).

<sup>35</sup> DOL conducted 142 such investigations in 2014, 190 in 2015, and 224 in 2016.

resulted in voluntary compliance by employers (i.e. immediately obtaining workers' compensation insurance). However, DOL may issue stop work orders and administrative citations for continued noncompliance, which may result in penalties up to \$150 per day. Despite this increased enforcement, and based on the Department's interviews with logging professionals, however, there are still a significant number of logging employers that do not purchase workers' compensation insurance. Loggers who do not incur the expense of purchasing workers' compensation insurance have a significant cost advantage and therefore are often able to unfairly outbid loggers who fulfill their statutory obligations.

According to loggers interviewed by the Department, another approach to reducing workers' compensation costs is to provide clearer direction to insurance companies about when workers may legitimately be excluded from an employer's payroll. Under Vermont law, employers are not required to purchase workers' compensation insurance for individuals who satisfy the statutory criteria for being an independent contractor.<sup>36</sup> Despite attempts by the Legislature and DOL to provide clarity on the question of when an individual may be considered an independent contractor, a precise definition of the term has been elusive. According to information reported to the Department, an insurance company performing a field audit of a logger's payroll may determine that workers classified by the employer as independent contractors at the time the policy was issued are at risk of being considered employees if a loss occurs. Because those workers represent potential risks to the insurer (i.e. the insurer will be obligated to pay their potential claims

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<sup>36</sup> 21 V.S.A. § 601(14)(F).

even if the employer has not purchased coverage), insurers tend to re-classify workers with uncertain status as statutory employees, thus increasing the employer's payroll and premium.

In an industry where assigned risk rates are \$51.37 per \$100 of payroll, an unexpected increase in the employer's premium as the result of an audit can be a crippling financial burden. Anecdotally, some loggers do not purchase insurance because they are concerned about the risk of an unanticipated premium increase. For this segment of the industry, providing increased clarity on the distinction between employees and independent contractors may provide an incentive to participate in the risk pool.

Another way to increase participation in the market is to decrease workers' compensation fraud. Certificates of workers' compensation insurance may be issued by insurance agents, on behalf of insurers, to employers that obtain workers' compensation coverage. These certificates are intended to provide a recipient (for instance, a customer, contractor, or other third party) with proof that an individual possesses workers' compensation insurance coverage. There is currently no requirement that certificates of insurance identify the class codes covered by the certificates or the names of workers covered by or excluded from the policies. Third parties can and should insist that any certificate of insurance be attached to the policy or policies in question. However, the Department has received anecdotal reports that some business owners in the forest economy that have not purchased workers' compensation coverage for field employees provide prospective employers with coverage certificates issued based on that business owners' coverage for office staff. Since the certificates do not identify the class codes or employees for which the workers'

compensation insurance applies, prospective employers may be misled into believing that coverage exists for field operations when it does not.

The Department does not currently regulate certificates of insurance, as they are not required to be filed with DFR. Therefore, additional analysis is required regarding the use of certificates of insurance and whether additional policy details (including covered individuals or class codes) should be included on such certificates. Other best practices should also be examined, such as requiring certificates of insurance to be attached to copies of the declaration pages of the applicable policies. Since certificates of insurance are designed to allow employers an efficient method to provide evidence of coverage, input should be obtained from all stakeholders, including employers, general contractors, sub-contractors, and insurers, to avoid creating workplace inefficiencies or other unintended consequences.

#### IV. Additional Areas of Study Required by Act 80

##### a. Seasonal and Short-Term Policies

Section 20 of Act 80 directs the Commissioner to examine “potential measures to encourage the creation of affordable seasonal and short-term workers’ compensation policies and measures to reduce the cost of workers’ compensation insurance coverage for small employers in seasonal occupations.” As explained below, the Department concludes that, while short-term workers’ compensation policies are available to employers, there is currently little demand for them. Certain mechanisms are set forth below that could potentially increase affordability and utilization of such policies.

Short-term policies have been permitted from the beginning of the workers' compensation system. Table 7 below sets forth findings from a review of the Vermont assigned risk market database for applications received and bound<sup>37</sup> for last three full calendar years.

<b>Table 7 2014-2016 Vermont Assigned Risk Market Applications</b>		
<b>Year</b>	<b>Total Applications Bound</b>	<b>Short Term Applications Bound</b>
2014	1230	7
2015	1180	5
2016	1214	5

Of 17 assigned risk market short-term applications bound over a three-year period, seven were to align the employer's policy expiration date to other insurance coverages, five were for true seasonal or short-term work, one was for short-term coverage until voluntary coverage became effective, and four applications did not specify the reason for their request. While there is opportunity for seasonal and short-term workers' compensation coverage in Vermont, the data in Table 7 demonstrates that demand is not significant. Further analysis is required to determine if any segment of the workforce is underserved because they fail to seek short-term coverage.

Since policy premiums are based on total payroll, rather than length of employment, the current workers' compensation system is designed to accommodate both longer term permanent employees and seasonal and short-term employees. Simply put, if a worker is not on duty and not being paid, the employer doesn't pay a workers' compensation premium.

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<sup>37</sup> An application is bound when it is accepted by the insurer.

Studies conducted by NCCI have shown that total payroll is the most equitable method to measure the potential loss exposure base. Claim costs rise steadily with increases in the average wage level for all classes combined and for each industry group. Furthermore, the relationship of average claim costs to average wage is strong and study results have confirmed that benefits track strongly with wage levels.

While the calculation of workers' compensation insurance premiums can become complicated depending on the size of the business, number of employees covered, variety of jobs performed, and variety of applicable rating programs, at its most basic level for small employers, workers' compensation premium is calculated as follows:

$$\textit{Total payroll} \div \$100 \times \textit{classification code rate} + \textit{expense constant} = \textit{estimated premium}$$

As explained in Section I(c) above, each employer in a class code is subject to the same rate. The "expense constant" is a flat fee that helps insurance companies recover expenses associated with issuing policies, keeping records of policy information, and the audit process. Currently set at \$160, the expense constant is applied at the inception of any workers' compensation policy. If a policyholder obtains two or more short-term policies in the same year, they would be required to pay an expense constant for each policy issued.

Current assigned risk market rating rules contemplate both full-term policies (12 months) and short-term policies (six months or less). However, an employer who obtains a short-term policy is required to pay 100% of the estimated premium at time of the application, while an employer who obtains a full-term policy (with at least \$5000 in premium) may pay a deposit of 30% of estimated premium at the time of the application, followed by equal installments in months

two through nine. Additionally, some carriers in the voluntary workers' compensation market offer a pay-as-you-go system for both full-term and short-term policies, where premiums are directly tied to payroll activity.

Though policies are available for seasonal and short-term employers, there may be opportunities to enhance access to this market. The Department suggests exploring the possibility of permitting premium deposits or pay-as-you-go arrangements for short-term policies in the assigned risk market to enhance affordability and availability of those policies.

b. Creation of a Regional Assigned Risk Pool

Section 21 of Act 80 directs the Commissioner to examine “potential mechanisms for joining with neighboring states to create a regional assigned risk pool for workers' compensation insurance and whether the creation of a regional assigned risk pool could reduce the cost of administering Vermont's assigned risk pool.” As explained below, the Department concludes that a regional pooling mechanism would likely increase, rather than reduce, the cost of administering Vermont's assigned risk pool.

The primary function of the assigned risk pool for workers' compensation insurance is to reinsure the losses of the servicing carriers who provide most of the coverage in the assigned risk market. These losses are distributed by the pool to all carriers in the state based on their *pro rata* share of premiums in the voluntary market. In New England, the assigned risk markets in Vermont, Connecticut, and New Hampshire are served by the National Workers Compensation Reinsurance Association (“NWCRA”), which has been in existence since 1970 and serves as the assigned risk pool for 23 jurisdictions. Massachusetts has established its own assigned risk pool, while Maine

and Rhode Island do not have a pooling mechanism but rather have created a state-run insurer of last resort.

In any residual market pooling mechanism that serves more than one jurisdiction, assigned risk losses are segregated by state and distributed only among workers' compensation carriers writing business in that state. This means that a pooling mechanism like NWCRA must maintain 23 separate accounts to track and distribute the losses of the states in which it does business. Similarly, a regional pooling entity composed of Vermont, New Hampshire, and Connecticut would need to maintain three separate accounts to track and distribute the losses of each member state. Although the technological and human infrastructure needed to track and allocate state-specific losses is larger for an entity like NWCRA than for a smaller regional pooling entity, it also benefits from efficiencies and economies of scale unavailable to the smaller entity and is therefore likely to have a lower cost-per-member. In addition, a regional pooling mechanism would incur start-up expenses for human and technological resources that an established organization like NWCRA has already recovered. Both the start-up expenses and the operating expenses of a regional pooling mechanism are likely to make it a more expensive option than the nationwide pooling mechanism currently in place. Therefore, the Department does not recommend attempting to create a regional assigned risk pool.

c. DFR Administration of the Assigned Risk Pool

Section 22 of Act 80 directs the Commissioner “to examine whether any premium savings or reductions in costs could be realized if the assigned risk pool for workers' compensation was administered directly by the Department of Financial Regulation rather than through a third party.”

The central issue raised by this proposal is whether a state agency such as DFR without experience administering an assigned risk market could achieve greater administrative efficiency than the current third-party administrator, NCCI.

The Department understood the Legislature's directive in Section 22 of Act 80 to refer to administration of the assigned risk plan, and the analysis below is based on this understanding. The assigned risk plan is the mechanism, described in 8 V.S.A. §4694, for providing workers' compensation insurance to employers who are unable to find it in the voluntary market. All insurance carriers who participate in the voluntary market are required to participate financially in the assigned risk plan to an extent that is proportional to their voluntary market share. They may do this in one of two ways – either by being a direct assignment carrier and insuring assigned risk market employers in the same way they insure voluntary market employers (i.e., by issuing policies on their own paper, managing claims, and bearing full responsibility for the profit or loss on the policy), or by participating in the assigned risk pool. In the assigned risk pool, employers are assigned to a “servicing carrier” that issues and administers the policies, but the losses (or gains) on each policy are spread among the members of the pool (i.e., the voluntary market carriers who elected not to be direct assignment carriers) in proportion to their share of premium in the voluntary market. There are currently two servicing carriers in Vermont's assigned risk plan. They are selected by the Department, with the assistance of NCCI, every three years.

Administration of the assigned risk plan would require development of a variety of operational capabilities the Department does not currently possess. These include processing and underwriting assigned risk applications, monitoring the performance of carriers in the assigned

risk market, administering the dispute resolution process for the plan, monitoring the financial performance of the plan, and determining the plan's projected expenses. Performing these duties would require staff expertise in underwriting, reinsurance, accounting, actuarial reserving, carrier audit and oversight, and information technology and support. Although Department staff possess expertise in some of these areas, that expertise is not workers' compensation-specific, and staff members are already engaged in discharging the Department's current statutory responsibilities. Assuming responsibility for administration of the workers' compensation assigned risk plan would thus require the Department to hire a significant number of highly-trained additional staff members.

In addition, one of the Department's consultants estimates the cost of purchasing and setting up computer systems capable of handling assigned risk policies could exceed several hundred thousand dollars. Although NCCI's start-up costs for administration of the assigned risk market have already been fully recovered, the Department would need to recover its start-up costs through the administrative expense charge added to each year's rates by the plan administrator.

For calendar years 2014 and 2015 (the latest for which data is available), NCCI's administrative expenses in Vermont averaged 3.6 percent of the assigned risk pool's net written premium, or \$3.60 per \$100 of premium. Assuming the Department was able to reduce administrative expenses for the assigned risk pool by 20 percent, the net savings to employers would be 72 cents per \$100 of premium, or slightly over \$32 per year for the average assigned policyholder.<sup>38</sup> These savings are nominal compared to the savings that could be realized by

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<sup>38</sup> Based on 2017 figures, the average annual premium in Vermont's assigned risk market was \$4,750.

implementing some of the measures suggested in Section III of this report. Moreover, all three independent actuaries consulted by the Department in the preparation of this report concluded it was far more likely the Department's administrative expenses would exceed those of the current third-party plan administrator, especially in the start-up years, rather than reduce them. For this reason, and given the nominal savings that would be realized even if the Department were able to administer the assigned risk market more efficiently than NCCI, the Department does not recommend this approach.

#### V. Recommendations for Action and Further Study

Considering demographic trends that indicate a shrinking work force and slow wage growth, there is an urgent need to grow the economy and make Vermont more affordable. Reducing workers' compensation premium rates and costs for high-risk industries and occupations advances both objectives. As a small state, investing in policies that support forestry, agriculture, construction, and other so-called "high-risk industries" that contribute significantly to our rural working landscape is essential. Therefore, the Department recognizes that the Act 77 and Act 80 studies of the workers' compensation market for high-risk industries provide an opportunity to better promote and protect the brand that is Vermont.

The Department engaged with DOL, AAFM, DFPR, the Department's outside actuaries, and NCCI to study a number of methods to potentially provide workers' compensation premium relief to identified high-risk industries. The Department determined that one straightforward, effective way to reduce costs for high-risk industries is to implement and/or enhance workplace safety programs. This solution has a proven track record, provides a clear benefit to all parties, and

is practical to implement. Most of the safety programs the Department evaluated utilize several days of classroom and field training by qualified industry professionals, which is important for developing the baseline competency needed to safely engage in high-risk industries such as logging. However, programs like Maine's effective CLP logging program utilize an on-site verification component. On-site verification allows trainers to confirm lessons are being implemented on the worksite and adjust where necessary. Discussions with Maine regulators and insurers indicate that on-site verification and worksite coaching have helped to stabilize and improve Maine's workers' compensation loss costs over time.

To further explore and potentially implement such enhanced safety and workplace training programs and certain other methods discussed in this report, the Department recommends that the Governor consider creating a workers' compensation task force. Such task force should be comprised of members representing DFR, DOL, AAFM, DFPR, NCCI, and the insurance industry, as well as any applicable high-risk industries. Based on its study, the Department makes the following specific recommendations for the task force.<sup>39</sup>

- A representative from LEAP should be invited to join the task force to discuss and potentially implement enhancements to the LEAP program for the logging industry, following Maine's model, including an on-site certification and recertification component to be conducted by qualified forestry professionals.
- The task force should examine safety programs in other high-risk industries with a view of potentially instituting similar industry-wide certification programs.

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<sup>39</sup> The Department notes that the solutions presented in this report are not intended to be cumulative for any class code. Several methods may apply, but the most advantageous method should be selected and implemented for each code.

- In consultation with the task force, the Department will work with NCCI to design one or more state-specific class codes to provide premium credits for loggers who successfully obtain and maintain a preferred certification level (either LEAP or a comparable certification).
- In consultation with the task force, the Department will work with NCCI to create a combined class code for log hauling (class code 2701) and contract trucking (class code 7219).
- The task force should also study and consider:
  - Implementing benefit offsets within the Vermont workers' compensation model for individuals receiving retirement and/or pension benefits, as discussed in Section I(d);
  - Customizing the assigned risk differential in the assigned risk market, as discussed in Section III(d), and adjusting voluntary loss costs, as discussed in Section III(d), either of which could have a significant impact on workers' compensation rates for high-risk occupations, but would require careful actuarial modeling by NCCI; and
  - Implementing alternative deposit premium requirements for short-term workers' compensation policies in the assigned risk market, as discussed in Section IV(a).

Addendum A

<b>Table 3</b>		
<b><u>Survey of State Safety Programs and Premium Credits</u></b>		
State	Premium Credit	Description of Program
Alaska	3%	<p><u>Alaska Residual Market Safe Workplace Incentive Program</u> Credit applied upon audit if:</p> <ul style="list-style-type: none"> <li>• Loss-Free Workplace for entire policy period; and</li> <li>• Employer attests that they have a safety program in place.</li> </ul>
Colorado	Up to 10%	<p><u>Premium Credits for Certified Risk Management Programs or Service</u> Credit depends on:</p> <ul style="list-style-type: none"> <li>• Prior year loss experience; and</li> <li>• Eligibility for schedule and experience rating.</li> </ul> <p>To qualify for the credit, employers must have:</p> <ul style="list-style-type: none"> <li>• A certified WC risk management program; and</li> <li>• Improved loss experience since their last renewal date.</li> </ul> <p>Certifications are performed by the Colorado Cost Containment Board (located at the Colorado Division of Labor and Employment).</p> <p>Refer to Colorado Regulation 5-3-1</p>
Delaware	Up to 19%	<p><u>Safety Program</u> Eligible for employers with annual premium of \$3,161 or more.</p> <p>Participants must undergo a safety inspection. The cost of the inspection is borne by the employer, and may be carried out by:</p> <ul style="list-style-type: none"> <li>• An independent safety expert approved by the Insurance Department;</li> <li>• Employer may submit their own safety inspection procedures for review by the Insurance Department; or</li> <li>• Qualified inspector from Delaware DOL.</li> </ul> <p>Larger credits are applied to employers with low credibility under the Experience Rating Plan.</p> <p>Refer to Delaware Regulations: Administrative Code: Title 18: 800</p>

**Table 3**  
**Survey of State Safety Programs and Premium Credits**

State	Premium Credit	Description of Program
D.C.	5%	<p><u>Employer Safe Workplace Program</u> Credit is for up to four years; certification is required for each year. The Department of Employment Services performs the certifications.</p> <p>Refer to D.C. Code § 36-301, 36-338 and D.C. Municipal Regulation 234.</p>
Florida	2%	<p><u>Employer Safe Workplace Program</u> Certification is required for each year in which premium credit is permitted under this program and is based upon evidence contained in the file of the insurer at the time the credit is allowed. At a minimum, the program must include a written safety policy and safety rules, and make provision for safety inspections, preventative maintenance, safety training, first-aid, accident investigation, and necessary recordkeeping.</p> <p>Refer to Section 440.1025, Florida Statutes</p>
Hawaii	Minimum 5%	<p><u>Hawaii Safety Premium Credit</u> Certification of an insured's Safety and Health Program by an individual certified by the Department of Labor and Industrial Relations is required for each year in which premium credit is permitted under this program.</p> <p>Refer to HRS § 431:14-103(c)</p>
Kansas	5%, subject to maximum of \$250	<p><u>Kansas Assigned Risk Safety Seminar Premium Credit Program</u> Must provide certification of attendance at a safety seminar authorized under this program. Determined and applied at audit.</p>
Louisiana	Up to 7%	<p><u>Safety Certification Premium Credit Program</u> 2% for attending cost containment meeting and providing certificate. Only eligible if experience mod is 1.5 or more, and premium is at least \$5,000.</p> <p>Additional 5% if employer satisfactorily implements an occupational safety and health program prescribed by (and certified by) OSHA.</p>

**Table 3**  
**Survey of State Safety Programs and Premium Credits**

State	Premium Credit	Description of Program
Massachusetts	Varies	<p><u>Qualified Loss Management Program (QLMP)</u></p> <p>Eligible for guaranteed cost and small deductible policies in the Assigned Risk Pool, or recently taken out of the Assigned Risk Pool.</p> <p>There are several qualified loss management firms. Each firm has a credit primarily determined by the loss reduction success experienced by all subscribing employers of the sponsoring loss management firm for the past seven years. Insureds receive a credit which varies based on the performance of the loss management firm they engage.</p> <p>Credit diminishes after three years.</p> <p>Refer to  <a href="https://www.wcribma.org/mass/ProgramOverview/Qlmp.aspx">https://www.wcribma.org/mass/ProgramOverview/Qlmp.aspx</a></p>
New Hampshire	Year 1: 10% Year 2: 7% Year 3: 3%	<p><u>New Hampshire Safety Incentive Program</u></p> <p>Assigned risk policies only. Must have premium of \$2,500 or more, participate in a retrospective rating plan, and participate in an approved managed care program.</p>
New York	Year 1: 4%  Subsequent Years: 2%	<p><u>Workplace Safety and Loss Prevention Incentive Program</u></p> <p>Eligible for employers with annual WC premium of at least \$5,000 an experience mod less than 1.30.</p> <p>Program is administered by the New York State Department of Labor.</p> <p>Safety evaluations are performed by certified specialists; DOL manages the licensing of specialists. Employer pays certified specialist for the evaluation.</p> <p>Refer to NYDOL Code Rule 60</p>

**Table 3**  
**Survey of State Safety Programs and Premium Credits**

State	Premium Credit	Description of Program
North Dakota	Up to 25%	<p><u>Safety Management Program (SMP)</u> Safety consultant conducts assessment and develops a plan to assist employers in making improvements. 10% credit.</p> <p><u>Safety Action Menu (SAM)</u> Provides employers with options to implement the safety improvement programs that best meet their business needs. Up to 15% credit.</p> <p>The two credits can be combined. The programs are administered by WSI (monopolistic state fund).</p> <p>Refer to <a href="https://www.workforcesafety.com/sites/default/files/employers/SMP_2016.pdf">https://www.workforcesafety.com/sites/default/files/employers/SMP_2016.pdf</a> and <a href="https://www.workforcesafety.com/sites/default/files/employers/SAM_2016_0.pdf">https://www.workforcesafety.com/sites/default/files/employers/SAM_2016_0.pdf</a></p>
Ohio	3%	<p><u>Industry-specific Safety Program</u></p> <ul style="list-style-type: none"> <li>• Online safety classes offered by Division of Safety and Hygiene;</li> <li>• Online consulting by Division of Safety and Hygiene experts; and</li> <li>• Ohio Safety Congress &amp; Expo.</li> <li>•</li> </ul> <p>Depending on payroll level, employers are required to complete 1, 2, or all 3 of the above to qualify for the 3% credit.</p> <p>The Division of Safety and Hygiene is part of Ohio BWC (monopolistic state fund).</p> <p>Refer to Ohio Admin. Code 4123-17-56.3</p>

**Table 3  
Survey of State Safety Programs and Premium Credits**

State	Premium Credit	Description of Program
Oklahoma	Sliding scale 10%-15%, depending on premium level	<p><u>Workers Compensation Premium Reduction Program (WCPR)</u> Available to employers that are insured by a private carrier or state fund, have an experience mod &gt; 1.0, and employ fewer than 250 employees locally or 500 employees nationwide.</p> <p>Performance review: To qualify for reduction at next renewal, employers must:</p> <ul style="list-style-type: none"> <li>• Have no claims during the year they participate in the program, or have a 10% reduction in claims incurred vs the prior year; and</li> <li>• Reduce the lost workday incident rate to national average, or by 1/3 the amount the national average was exceeded during the prior year.</li> <li>•</li> </ul> <p>Program is offered by OK DOL. DOL provides certifications. Cost is borne by employer, but employer may claim \$1,000 tax deduction</p> <p>Refer to <a href="https://www.ok.gov/odol/documents/OSHAWCPRFact_Sheet.pdf">https://www.ok.gov/odol/documents/OSHAWCPRFact_Sheet.pdf</a></p>
Pennsylvania	5%	<p><u>Certified Safety Committee Credit Program</u> The Pennsylvania Department of Labor and Industry promulgates certification criteria; employer submits certification and renewal affidavits for approval by the Department.</p> <p>Refer to <a href="http://www.dli.pa.gov/Individuals/Workers-Compensation/publications/Documents/WC%20Act/chapter_129.pdf">http://www.dli.pa.gov/Individuals/Workers-Compensation/publications/Documents/WC%20Act/chapter_129.pdf</a></p>
West Virginia	Varies	<p><u>Qualified Loss Management Program (QLMP)</u> Available to insureds of the State Fund.</p> <p>The employer engages a recognized loss management firm to administer its QLMP. The amount of the premium credit is primarily determined by the loss reduction success experienced by all of the subscribing employers of the sponsoring loss management firm.</p> <p>Administered by Office of insurance Commissioner.</p> <p>Refer to <a href="https://www.blr.com/Workplace-Safety/Safety-Administration/Safety-Plans-in-West-Virginia">https://www.blr.com/Workplace-Safety/Safety-Administration/Safety-Plans-in-West-Virginia</a></p>

**Table 3**  
**Survey of State Safety Programs and Premium Credits**

State	Premium Credit	Description of Program
Wyoming	3-10%	<p><u>Health &amp; Safety Consultation Employer Discount Program</u>  Administered by OSHA. Premium discounts are effective for up to 3 years.</p> <p>Surveys are conducted by Wyoming OSHA Consultation office, Workers Compensation Safety and Risk (WCSR) Office, the Wyoming State Mine Inspector, or a qualified third-party health and safety professional approved by the Wyoming Department of Workforce Services.</p> <p>Level of credit varies depending on the extent of the loss control survey, associated ratings, and Experience Modification level.</p> <p>Refer to  <a href="http://www.wyomingworkforce.org/businesses/osha/discount">http://www.wyomingworkforce.org/businesses/osha/discount</a></p>