



**THE WORKERS' COMPENSATION
RATING AND INSPECTION BUREAU**

April 29, 2013

CIRCULAR LETTER NO. 2217

To All Members and Subscribers of the WCRIBMA:

**EXPERIENCE RATING MODIFICATION WORKSHEET CHANGES AND
INTERPRETATION OF EXPERIENCE RATING PLAN RULE 4-E.
EXCLUSIONS**

Recently, the Division of Insurance (“DOI”) contacted the WCRIBMA to express its concern *“that bidders on public and private contracts sometimes may be harmed by a failure of prospective contractors to understand the limitations of workers’ compensation experience rating as a proxy for employer safety.”* To address their concern, the DOI asked the WCRIBMA to put in place certain changes to experience rating modification worksheets. For further details regarding the DOI’s concerns please refer to the copy of the Commissioner of Insurance’s letter to the WCRIBMA that is attached to this Circular Letter as Exhibit A. In response to the DOI’s requests, the WCRIBMA announces the following:

1. As of May 1, 2013, The WCRIBMA will produce, upon request, a non-premium-affecting, purely illustrative experience modification worksheet that may be used for bidding purposes by employers whose insurers are currently seeking subrogation recoveries. The “illustrative modification” will remove the claim(s) with pending subrogation action from the experience rating calculation. An insured employer impacted by its insurer’s pending third party action may obtain an “illustrative modification” by submitting a written request by facsimile or email to the WCRIBMA, which is the only entity with authority to issue an “illustrative modification”.
 - The request must include the effective date for the “illustrative modification”, the policy number, and the claim number and accident date for the claim that is the subject of the pending third party action.
 - The request must be in writing on the insured employer’s stationary, fax cover sheet, or email identifiable as originating from the insured employer. The request

may be submitted by the insured employer's agent/producer as long as the insured employer has provided the WCRIBMA with a letter of authority for the agent/producer. The letter of authority shall be written on the insured employer's stationary, fax cover sheet, or email identifiable as originating from the insured employer.

- Requests should be faxed to 617-439-6055 attention: Data Operations or emailed to DataOperations@wcribma.org.

Upon receipt of the insured employer's or agent/producer's properly completed request, the WCRIBMA will contact the insurer to confirm the existence of such a third party action.

Upon receiving confirmation from the insurer, the WCRIBMA will issue the "illustrative modification" to the insured employer or its agent/producer. The "illustrative modification" will generally be provided within ten (10) business days of the WCRIBMA's receipt of a properly completed request. An Example of an "illustrative modification" is attached to this Circular Letter as Exhibit B.

2. All intrastate experience modification worksheets produced by the WCRIBMA beginning September 1, 2013 will include the following language.

"Experience Modifications should not be used alone as a test for workplace safety. Experience modifications may not reflect the possibility of future recoveries for accidents which are ultimately determined to be the liability of another entity, and third party recoveries, when received, may retroactively reduce both experience modification and employer premiums. In addition, while Massachusetts 'balances' its experience ratings at 1.00, some other jurisdictions do this 'balancing' at a number below 1.00. Similar risks' modifications in jurisdictions that balance at a number less than 1.00 will look lower but produce the same policy premiums due to counterbalancing offsets in basic classification rates in those jurisdictions."

Any insurer that distributes an intrastate experience modification worksheet must also include this language on each worksheet.

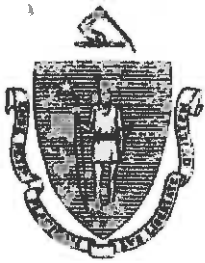
3. The WCRIBMA agrees with the DOI that the last bullet under Exclusions in Rule 4-E "Changes in Experience Rating Modifications" allows for exceptions to the 90-day retroactivity limitation for increases in experience rating modifications due to judicial subrogation determinations. As such, if an insurer reduces its reserves in anticipation of a subrogation recovery, but is ultimately unsuccessful in obtaining recovery in the amount expected, the resulting increased experience rating modification may be applied retroactively to the inception of the policy, or as of the anniversary rating date, if different than the policy effective date. The Experience Rating Plan Rule 4-E is attached to this Circular Letter as Exhibit C.

Please contact me at 617-646-7524 or asalido@wcribma.org if you have any questions.

Anthony Salido

Data Operations Director

Exhibit A



COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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JOSEPH G. MURPHY
COMMISSIONER OF INSURANCE

April 2, 2013

Paul Meagher, President
Workers' Compensation Rating and
Inspection Bureau of Massachusetts
101 Arch Street, 5th Floor
Boston, MA 02110

Dear Mr. Meagher:

As we previously have discussed, it has come to the Division of Insurance's ("Division") attention that bidders on public or private contracts sometimes may be harmed by a failure of prospective contractors to understand the limitations of workers' compensation experience rating as a proxy for employer safety. This limitation is a function of, among other things, the customary handling of subrogation by insurers and the fact that different jurisdictions may balance experience rating programs at different levels. The Division is interested, therefore, in putting in place several changes to the reporting of employers' experience modifications that we believe could spur economic activity in the Commonwealth without creating undue burden on carriers.

First, to improve the general understanding of both Massachusetts employers and those who may be considering utilizing their services, the Division requests that the following language be printed on every Experience Modification delivered to Massachusetts policyholders:

Experience Modifications should not be used alone as a test for workplace safety. Experience modifications may not reflect the possibility of future recoveries for accidents which are ultimately determined to be the liability of another entity, and third party recoveries, when received, may retroactively reduce both experience modification and employer premiums. In addition, other states may use methods that produce modifications that may look lower (e.g., by balancing at a lower number) but which would actually produce the same premiums as are produced here if those methods were adopted in their entirety in Massachusetts.

As we have indicated in prior discussions on this matter, it is important to distribute this information as widely as possible, because employers of many different types and loss experience may bid on contracts, and many of them may not know in advance of receiving a mod sheet that they will be doing so.

In addition to this change, the Division requests the Workers' Compensation Rating and Inspection Bureau of Massachusetts ("WCRIBMA") produce, upon request, a non-premium-affecting, purely illustrative mod (including any illustrative ARAP changes) that may be used for bidding purposes by employers that currently are seeking subrogation recoveries. It is the Division's understanding that the following procedure has been deemed feasible by WCRIBMA staff and members:

1. An insured adversely impacted by a pending third party action would contact the WCRIBMA and request an "illustrative modification";
2. The WCRIBMA will contact the insurer to confirm the existence of such a third party action; and
3. Upon receiving confirmation from the insurer, the WCRIBMA will issue the "illustrative modification" to the insured. This calculation would exclude claims that the WCRIBMA has confirmed to be the active, but as yet incomplete, subject of attempted subrogation recovery.

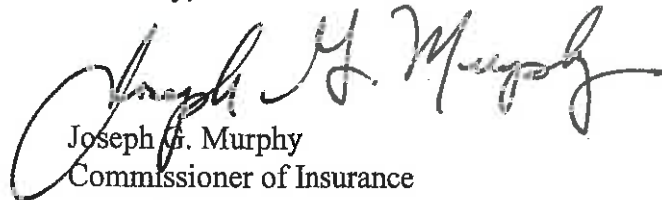
The Division also has contemplated requesting changes to the Statistical Plan and Experience Rating Manual that would remove any currently existing penalty upon those (perhaps quite few) insurers that reduce their reserves in anticipation of a subrogation recovery, but which are ultimately unsuccessful in obtaining recoveries in the amounts expected. These changes would involve a clarification that the last bullet under Exclusions in Rule E "Changes in Experience Rating Modifications" in the existing Manual contemplates judicial determinations regarding subrogation. Such a clarification, however, would make several alterations to the Statistical Plan necessary in order to keep carrier practices uniform and to protect employers against inappropriate retroactive increases.

In order to avoid multiple changes to the Statistical Plan and Manual, if the WCRIBMA can confirm to the Division that the language in the above-referenced bullet has allowed and will continue to allow exceptions to the 90-day retroactivity limitation for judicial subrogation determinations, the Division will require only the previously noted changes to the Experience Modification language. Please direct this confirmation to my attention at your earliest convenience.

Letter to Paul Meagher, President
Workers' Compensation Rating and Inspection Bureau of Massachusetts
April 2, 2013
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I thank you in advance for your prompt attention to and assistance with this endeavor, which the Division hopes will benefit economic development in the Commonwealth.

Sincerely,



Joseph G. Murphy
Commissioner of Insurance

cc: Walter Horn, PhD, State Rating Bureau, Division of Insurance
Karen L. Blomquist, Deputy Commissioner of Communications and Operations, Division of Insurance
Dan Crowley, Vice-President – Customer Services, WCRIBMA
✓ Ellen F. Keefe, Esq., Vice-President and General Counsel, WCRIBMA

Exhibit B



**THE WORKERS' COMPENSATION
RATING AND INSPECTION BUREAU**

Illustrative Experience Modification for Bidding Purposes

COMBO GROUP ID: 001234567 RATING DATE: 1/1/2013 to 1/1/2014
 COVERAGE GROUP ID: 1234567 ABCD EXCAVATION INC
 CARRIER: 22222 EFG INSURANCE CO POLICY: WC000123C13

Experience Modifications should not be used alone as a test for workplace safety. Experience modifications may not reflect the possibility of future recoveries for accidents which are ultimately determined to be the liability of another entity, and third party recoveries, when received, may retroactively reduce both experience modification and employer premiums. In addition, while Massachusetts 'balances' its experience ratings at 1.00, some other jurisdictions do this 'balancing' at a number below 1.00. Similar risks' modifications in jurisdictions that balance at a number less than 1.00 will look lower but produce the same policy premiums due to counterbalancing offsets in basic classification rates in those jurisdictions.

The factor below is calculated for illustrative purposes. Claims that have been identified, by the insurance carrier, on which a third party action is pending have been excluded from the calculation of this factor.

Policy Effective Date	Policy Number	Actual Incurred Losses	Actual Primary Losses	Expected Losses	Expected Primary Losses	Eligibility Premium
Coverage Group ID 1234567 ABCD EXCAVATION INC						
1/1/2009	WC000123C09	264	264	3,240	551	9,192
1/1/2010	WC000123C10	656 *	656 *	3,564	606	10,542
1/1/2011	WC000123C11	252	252	3,920	666	11,596
EXPERIENCE TOTALS: A=		1,172	B= 1,172	C= 10,724	D= 1,823	31,330

Actual Excess Losses	E = (A - B) =	0
Expected Excess Losses	F = (C - D) =	8,901
Weighting Value	G =	0.07
Ballast Value	H =	17,500

Experience Mod Formula

$B + H + (E \times G) + ((1 - G) \times F)$	18,672 +	0 +	8,278
$D + H + (F \times G) + ((1 - G) \times F)$	19,323 +	623 +	8,278

Illustrative Experience Modification Factor: 0.95

Illustrative All Risk Adjustment Program (ARAP) Surcharge: 1.00

* - Losses do not include claim(s) which have a pending third party action.

Produced: 3/21/2013



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RATING AND INSPECTION BUREAU**

Illustrative Experience Modification for Bidding Purposes

COMBO GROUP ID: 001234567 RATING DATE: 1/1/2013 to 1/1/2014
 COVERAGE GROUP ID: 1234567 ABCD EXCAVATION INC

CARRIER: 22222 EFG INSURANCE CO POLICY: WC000123C13

Policy Period 01/01/2009 to 01/01/2010 Carrier 22222 Policy WC000123C09

Claim Number or # of claims	Class Code	Inj Type	Open=0 Closed=1	Actual Incurred Losses	Primary Actual Losses	Class Code	Payroll	Exp. Loss Rate	Expected Losses	D Ratio	Primary Expected Losses
UNDER \$5000						6217	220,000	1.47	3,234	0.17	550
C0000001	6217	06	1	264	264	8810	15,000	0.04	6	0.20	1
				264	264		235,000		3,240		551

Policy Period 01/01/2010 to 01/01/2011 Carrier 22222 Policy WC000123C10

Claim Number or # of claims	Class Code	Inj Type	Open=0 Closed=1	Actual Incurred Losses	Primary Actual Losses	Class Code	Payroll	Exp. Loss Rate	Expected Losses	D Ratio	Primary Expected Losses
UNDER \$5000						6217	242,000	1.47	3,557	0.17	605
C0000003	6217	06	1	212	212	8810	16,500	0.04	7	0.20	1
C0000004	6217	06	1	444	444						
\$5000 AND OVER											
C0000005	6217	09	0	K 42,500	5,000						
				656	656		258,500		3,564		606

K - THIRD PARTY CLAIM. LOSS NOT INCLUDED IN POLICY PERIOD TOTALS SHOWN ABOVE.

Policy Period 01/01/2011 to 01/01/2012 Carrier 22222 Policy WC000123C11

Claim Number or # of claims	Class Code	Inj Type	Open=0 Closed=1	Actual Incurred Losses	Primary Actual Losses	Class Code	Payroll	Exp. Loss Rate	Expected Losses	D Ratio	Primary Expected Losses
UNDER \$5000						6217	266,200	1.47	3,913	0.17	665
C0000006	6217	05	1	252	252	8810	18,150	0.04	7	0.20	1
				252	252		284,350		3,920		666

Produced: 3/21/2013

Exhibit C



Experience Rating Plan Manual—2003 Edition

RULES

RULE 4—APPLICATION AND REVISION OF EXPERIENCE RATING MODIFICATIONS

Effective 01 Jan 2006 12:00:01

E. CHANGES IN EXPERIENCE RATING MODIFICATIONS

(Additional Rules: MA, ME, NE, TN) (Exceptions: GA, NM)

Experience rating modifications may change for reasons detailed in this Plan. These changes can occur at various points in time. The following table provides the rules regarding the application of an experience rating modification when a change occurs.

Changes in Experience Rating Modifications Table

(Exceptions: AK, FL, IL, KS, ME, MO, NE, OR, TN)

If the change results in . . .	And the change occurs . . .	Then the change is applied . . .
A decrease in the experience rating modification for any reason other than a correction in classification according to Rule 4-B-3	<ul style="list-style-type: none"> At any time during the policy period, or After expiration of the policy but within revision period according to Rule 4-B 	<ul style="list-style-type: none"> Retroactively to the inception of the policy, or As of the anniversary rating date, if different than the policy effective date
An increase in the experience rating modification due to: <ul style="list-style-type: none"> Revision of payroll Revision of losses Change in status from preliminary to final modification Change in status of contingent modification Any additional reasons other than exclusions listed below 	Within 90 days after the: <ul style="list-style-type: none"> Policy effective date, or Anniversary rating date if different than the policy effective date 	<ul style="list-style-type: none"> Retroactively to the inception of the policy, or As of the anniversary rating date, if different than the policy effective date
	More Than 90 days after the: <ul style="list-style-type: none"> Policy effective date, or Anniversary rating date if different than the policy effective date 	Pro rata from the date the insurer endorses the policy.
Exclusions: An increase in the experience rating modification due to:	<ul style="list-style-type: none"> At any time during the policy period, or 	<ul style="list-style-type: none"> Retroactively to the inception of the policy, or

<ul style="list-style-type: none"> • Changes in ownership or combinability status • Retroactive reclassification of a risk • The termination of a client's employee leasing arrangement under a master policy approach • Late issuance of an experience rating modification due to an employer who has failed to cooperate with audits or other actions attributable to the employer or representatives of the employer, including but not limited to modification avoidance • Appeals Board or other appropriate administrative process or judicial decision 	<ul style="list-style-type: none"> • After expiration of policy 	<ul style="list-style-type: none"> • As of the anniversary rating date, if different than the policy effective date <p>Note: Increases in experience rating modifications due to change in ownership or combinability status are applied retroactively to the date of change according to Rule 3-E-3.</p>
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