



**THE WORKERS' COMPENSATION
RATING AND INSPECTION BUREAU OF MASSACHUSETTS**
101 ARCH STREET - 5TH FLOOR, BOSTON, MA 02110
(617) 439-9030 FAX 439-6055

March 2, 1990

CIRCULAR LETTER NO. 1530

To All Members and Subscribers of the Bureau:

**Application of Late Experience Modifications/Contingent Modifications
Experience Rating Plan Manual**

The Division of Insurance has approved the above item.

The purpose of this item is to establish rules restricting the application of increases in experience rating modifications issued after the effective date. It also established rules for the calculation of experience rating modifications using the available portion of the data currently required by the Experience Rating Plan when all such data is not available.

The attached Filing Memorandum gives the background of this item, outlines and contains proposed rules changes in the Experience Rating Plan Manual and comments upon their impact.

Also attached is a copy of the new Contingent Experience Rating Modification Factor Endorsement WC 00 04 12 which may be issued in conjunction with the Workers Compensation and Employers Liability policy when a Contingent Experience Modification Factor is used.

This item is effective 12:01 A.M., April 1, 1990 applicable to experience ratings issued for new, renewal and outstanding business.

NORMAN R. FONTAINE
Vice President

NRF/jd

Attachments

FILING MEMORANDUM

APPLICATION OF LATE EXPERIENCE MODIFICATIONS/CONTINGENT
MODIFICATIONS

(To become effective 12:01 A.M., April 1, 1990, applicable to experience ratings issued for new, renewal and outstanding policies.)

Purpose:

This item establishes rules restricting the application of increases in experience modifications issued after the rating effective date. It also establishes rules for the calculation of experience rating modifications using the available portion of the data currently required by the Experience Rating Plan when all such data is not available.

Background:

The Experience Rating Plan Manual provides rules for the development and application of experience modifications. There are no restrictions to applying an experience modification retroactively. This has resulted in situations where an insureds workers compensation premium was significantly increased well into the policy term. Application of an increase would be proper according to the rules and intent of the Experience Rating Plan. However, there is a perception that this may result in a hardship to the purchaser of workers compensation insurance and that rules should be adopted that would limit the retroactive application of increases in experience rating modifications. Several states have adopted such rules.

In conjunction with this filing, we also intend to resolve a situation where certain data currently required for issuing a rating is not available and the rating organization does not issue an experience modification. The Experience Rating Plan Manual rules do not specify what, if any, experience modification applies if none is issued. Oregon and Arkansas have state exceptions with the former requiring that a carrier develop an experience modification based on available data and the latter requiring that the prior year modification will be used. In other states, the Experience Rating Modification Factor Endorsement (WC 00 04 03) provides that the factor, if any, shown on the Information Page is an estimate. If an experience modification is not issued by the rating organization, the original estimate developed by the carrier would probably be applied.

Proposal:

It is proposed that the Experience Rating Plan Manual rules be amended to include rules to limit the application of increases in experience modifications that are endorsed to a policy more than 90 days past effec-

tive date or the applicable anniversary rating date for the policy. For increases that are endorsed more than 90 days past the policy effective date or the applicable anniversary rating date, it is proposed that they shall be applied prospectively as of the date the carrier endorses the increased modification to the policy.

The rule changes proposed for the introduction of a contingent rating will enable the rating organization to issue ratings for virtually all qualified risks and eliminate the ambiguity that exists. These rules contain minimum data requirements for contingent ratings issued for both intrastate and interstate ratings.

The proposed rules affecting restricted application of late experience modifications still provides the insured with the benefit of having any decrease in the modification applied retroactively to the inception of the policy or anniversary rating date if different than the policy effective date.

The above changes to the Experience Rating Plan Manual are proposed to become effective April 1, 1990, applicable to experience ratings issued for new, renewal, or outstanding policies.

Impact:

The proposed rule limiting the application of experience modification increases is intended to be a positive step in improving responsiveness of industry practices to the conditions in the marketplace. While developing this proposal some consideration was given to the possibility of policyholder manipulation of the rules, such as impeding the audit process to delay the submission of required Unit Statistical cards. However, we do not believe this would occur with any frequency and should not have any significant impact.

The actual premium impact of this filing can not be precisely determined. It has been standard industry practice to apply decreases in experience modifications as well as increases to the inception of the policy. The proposed rule restricting the application of some increases retroactively to policy inception will lead to a small reduction in premium.

The approval of rules for contingent modifications provides the rating organization with the ability to issue an experience modifier for virtually every qualified risk. It will provide a rating organization issued modification for those situations where none exists today and the carrier has determined what modification it will apply. This rule will provide for uniformity in dealing with such situations.

A current evaluation of the intrastate rating population issued in NCCI jurisdictions indicated only 2% or 4,500 ratings would have been issued as contingent ratings. The interstate ratings are more complex because they involve multiple states and in many cases, one or more subsidiaries.

Currently, it is estimated that approximately 10% or 3,000 interstate ratings would be issued annually on a contingent basis. It should be noted that contingent ratings will identify the carriers whose data we believe is missing. We expect this procedure will improve carrier responsiveness to our requests and act as an additional aid to current and developing systems to collect data.

Implementation:

In order to implement this proposal, the attached exhibits illustrate the changes required in the Experience Rating Plan Manual. The new Contingent Experience Rating Modification Factor Endorsement (WC 00 04 12) will become part of the Forms Manual of Workers Compensation and Employers Liability Insurance.

EXHIBIT I

EXPERIENCE RATING PLAN MANUAL

Present Phraseology:

PART TWO
OPERATION OF THE PLAN

D. PAYROLLS AND LOSSES

4. Revision of Losses

Carrier submission of revised unit reports to the rating organization, for purposes of recalculating the current experience modification, is permissible only under the following circumstances:

- a. Originally reported loss values were incorrect due to a clerical error.
- b. The claimant or carrier has made a third party recovery and the third party has not filed a liability-over claim.
- c. The third party in b. above, does file a liability-over claim but settlement of such claim does not result in its recovery against the insured.
- d. Where the originally reported claim is noncompensable as determined by:
 1. official ruling denying benefits under the Workers' Compensation Law.

Proposed Phraseology:

PART TWO
OPERATION OF THE PLAN

D. PAYROLLS AND LOSSES

4. Revision of Losses

SAME

EXHIBIT I

EXPERIENCE RATING PLAN MANUAL

Present Phraseology:

PART TWO
OPERATION OF THE PLAN

D. PAYROLLS AND LOSSES

4. Revision of Losses

2. a claimant's failure to file for benefits during the period of limitation allowed by the Workers' Compensation Law.

3. a claimant's failure to prosecute his claim when a carrier contends, prior to valuation date, that the claimant is not entitled to benefits under the Workers' Compensation Law.

NONE

NOTE: The revised unit reports referenced above may also be used to recalculate the two preceding experience modifications.

Proposed Phraseology:

PART TWO
OPERATION OF THE PLAN

D. PAYROLLS AND LOSSES

4. Revision of Losses

SAME

Application of revised experience modifications calculated according to a., b., c. and d. above is subject to Rule E.6. of Part Three of this Plan.

SAME

EXHIBIT I

EXPERIENCE RATING PLAN MANUAL

Present Phraseology:

PART THREE
ADMINISTRATION OF THE PLAN

E. APPLICATION OF EXPERIENCE
MODIFICATION

5. NONE

6. NONE

Proposed Phraseology:

PART THREE
ADMINISTRATION OF THE PLAN

E. APPLICATION OF EXPERIENCE
MODIFICATION

5. Contingent Modifications

A contingent modification may be issued by the rating organization when unsuccessful in obtaining the unit statistical data to produce a rating or a record of coverage is not available for an experience period. The following procedure shall apply:

a. A contingent modification shall include a minimum of two years of first report unit statistical experience for a three year experience period or one year of first report unit statistical experience for a two year experience period.

b. The contingent modification shall apply unless another experience modification is issued by the rating organization.

6. Changes in Experience Modifications

a. Changes in experience modifications which result in a decrease in the modification, whether

EXHIBIT I

EXPERIENCE RATING PLAN MANUAL

Present Phraseology:

PART THREE
ADMINISTRATION OF THE PLAN

E. APPLICATION OF EXPERIENCE
MODIFICATION

6. NONE

Proposed Phraseology:

PART THREE
ADMINISTRATION OF THE PLAN

E. APPLICATION OF EXPERIENCE
MODIFICATION

6. Changes in Experience
Modifications

determined during the policy period or at audit, shall be applied retroactively to the inception of the policy or to the Anniversary Rating Date, if different than the policy effective date.

b. Changes in experience modifications which result in an increase in the last modification applied or endorsed to the policy, shall be implemented as follows:

1. During the first 90 days of the policy period, the increase in premium is applied retroactively to the inception of the policy.

2. After the first 90 days of the policy period, the increase in premium is computed pro rata from the date the insurer endorses the policy. Or,

3. Within the first 90

EXHIBIT I

EXPERIENCE RATING PLAN MANUAL

Present Phraseology:

PART THREE
ADMINISTRATION OF THE PLAN

E. APPLICATION OF EXPERIENCE
MODIFICATION

6. NONE

Proposed Phraseology:

PART THREE
ADMINISTRATION OF THE PLAN

E. APPLICATION OF EXPERIENCE
MODIFICATION

6. Changes in Experience
Modifications

days after the
Anniversary Rating
Date, the increase in
modification is
applied retroactively
to the Anniversary
Rating Date, if
different than the
policy effective date.
Or,

4. more than 90 days
after the Anniversary
Rating Date, the
increase in modifica-
tion is computed pro
rata from the date
the insurer endorses
the policy.

c. The provisions contained
in Rule b.2., b.3. and
b.4. above do not apply
to increases in modifica-
tions resulting from:

1. Late issuance of an
experience modifica-
tion due to an
employer who has
failed to cooperate
with audits or be-
cause of other faults
attributable to the
employer or agents of

EXHIBIT I

EXPERIENCE RATING PLAN MANUAL

Present Phraseology:

PART THREE
ADMINISTRATION OF THE PLAN

E. APPLICATION OF EXPERIENCE
MODIFICATION

6. NONE

PART FOUR
SPECIAL RULES FOR RISKS WITH MULTI-
STATE OPERATIONS

6. NONE

Proposed Phraseology:

PART THREE
ADMINISTRATION OF THE PLAN

E. APPLICATION OF EXPERIENCE
MODIFICATION

6. Changes in Experience
Modifications

the employer.

2. Retroactive reclass-
sification of a risk.

3. Changes in risk
ownership.

PART FOUR
SPECIAL RULES FOR RISKS WITH
MULTI-STATE OPERATIONS

6. Contingent Modifications

Contingent modifications for
Interstate risks with a
three year experience period
shall contain a minimum of
two years of first report
unit statistical experience
for each state meeting the
Intrastate eligibility
levels. For risks with a
two year experience period,
a minimum of one year of
first report unit statisti-
cal experience for each
state meeting the Intrastate
eligibility level shall be
used.

EXHIBIT II

WORKERS COMPENSATION AND EMPLOYERS LIABILITY
INSURANCE POLICY

WC 00 04 12

Original Printing

Effective April 1, 1990.

STANDARD

CONTINGENT EXPERIENCE RATING MODIFICATION FACTOR ENDORSEMENT

The premium for this policy will be adjusted by an experience rating modification factor. The factor shown in the schedule is a Contingent Experience Rating Modification factor based on the appropriate experience data available and replaces any prior experience modification factor. We will issue an endorsement to show a revised factor if appropriate additional experience data becomes available. The Contingent factor will apply unless a revised factor is subsequently issued.

SCHEDULE

NOTES:

1. This endorsement may be used when a contingent experience modification factor is used.
2. An appropriate typewritten entry may be made in the Information Page instead of using this endorsement.