

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

101 ARCH STREET - 5TH FLOOR, BOSTON, MA 02110  
(617) 439-9030 FAX 439-6055

May 31, 1990

**CIRCULAR LETTER NO. 1537**

To All Members and Subscribers of the Bureau:

Item E-1261 - Change of Ownership Rules/Transfer of Experience  
Experience Rating Plan Manual

The Division of Insurance has approved the above item, adopted by our committees, to become effective 12:01 A.M., July 1, 1990, applicable to ownership changes on or after that date.

As indicated in the attached Filing Memorandum, the rules of the Experience Rating Plan Manual are being modified to provide, with limited exception, for the continued use of experience of an entity undergoing an ownership change. The continued experience will generally be transferred to the acquiring, surviving or new entity.

Entities with good experience will continue to benefit from their past record of effective loss control. This change will also prevent debit rated operations from escaping the impact of their prior loss history simply by undergoing a change in ownership.

The acquiring entity's rating will be recalculated to include the experience of the acquired entity. If the seller has retained any of its operations sufficient to be experience rated, its rating will be recalculated to exclude the experience for the disposed of entity.

Due to the impact on experience rating calculations, prompt notice that an ownership change has occurred is essential. Accordingly, this item includes a provision requiring that policyholders notify their carrier in writing within 90 days of an ownership change. Failure to comply can result in a delay in the recalculation of the modification until the next anniversary rating date.

In order to implement this item, the attached Exhibit I outlines the changes which will be required in the Experience Rating Plan Manual.

Exhibit II is a new endorsement designed to inform policyholders of the necessity of prompt reporting of ownership changes. Form WC 00 04 14 will become part of the Forms Manual of the Workers Compensation and Employers Liability Insurance.

Reprinted manual pages will be released.

NORMAN R. FONTAINE  
Vice President

NRF/jd

Attachment

**FILING MEMORANDUM**

**ITEM E-1261 - CHANGE OF OWNERSHIP RULES/TRANSFER OF EXPERIENCE**

(To become effective 12:01 A.M., JULY 1, 1990 applicable to ownership changes on or after that date.)

**Purpose:**

The purpose of this item is to amend the rules of the Experience Rating Plan Manual to provide for the continued use of the experience of an entity undergoing a change in ownership.

**Background:**

Experience rating adjusts the manual premium for a risk by development of a factor which recognizes individual risk variances in size and losses. The plan benefits insureds because it provides a financial incentive to implement and maintain workplace safety programs. Carriers benefit also, since the experience modification factor provides an indication of a risk's projected future losses.

For many years, the rules of the Experience Rating Plan Manual have provided that the experience and experience modification of an entity undergoing a change in ownership be discontinued. As a result, when a material change took place, a unity modification (1.00) applied as of the date of the change, unless the entity was acquired by an entity with an existing experience modification. Experience developed as of the date of the change was included in future experience ratings of the acquiring entity. This rating process was based simply on a majority change in ownership.

Majority ownership has been the key determinant in the combination of separate entities for purposes of experience rating. The basis for this is that ownership provides the authority and responsibility to control and otherwise affect the safety practices and therefore, workers compensation losses of a business. This philosophy has not changed. What has changed is the concept that an entity's past record of loss control success, reflected by its experience modification, should be discarded simply due to a change in ownership.

The current system has generated numerous questions regarding two basic issues: the loss of a valid credit modification and the avoidance of debit modifications. Currently, when an entity with a credit modification changes ownership, it loses that credit modification. Most often, at least for the short term, there will be no change in the manner in which the business is operated.

Continuing the use of the experience can be particularly beneficial in those cases where the sale is made by an absentee owner and the same management, employees, equipment and operating procedures continue under the new owners.

The second issue this filing addresses is that it prevents entities from avoiding debit modifications simply by undergoing a change in ownership. The current system has been circumvented, particularly in recent years, by this type of activity. As workers compensation costs increase, so does the incentive to avoid the additional premium costs associated with a debit modification. Instead of taking necessary steps to improve workplace safety, some employers have opted to negate intent of the current system by use of real or contrived ownership changes which immediately reduce the modification to 1.00.

In addition, the current system may also be manipulated by risks with credit modifications. There have been situations where risks have withheld information regarding a change in ownership for years in an attempt to avoid the loss of the credit modification. This filing is intended to promote the timely reporting of ownership changes and remove any incentive to withhold such information.

Another factor which influenced the filing of this item is the trend toward leveraged buyouts, acquisitions and mergers. In many instances these transactions are made for investment purposes only and involve no change in the nature of the acquired entity's business or in the manner in which it operates. In such cases, the elimination of prior experience is not warranted.

These issues can be addressed by providing that the experience of an entity which has undergone a change in ownership be included in the rating of the acquiring entity. Several independent bureaus currently employ or have recently adopted a similar system. This item filing introduces this approach on a countrywide basis and may be viewed as an extension of the already existing rule, approved in 1988, with respect to continuation of experience when a change occurs involving members of an immediate family. Under this proposal, the experience of both credit and debit rated entities will not be eliminated, but will be transferred to the experience rating of an entity under its new ownership.

**Proposal:**

It is proposed that the rules of the Experience Rating Plan Manual be modified to provide, with limited exception, for the continued use of experience of an entity undergoing an ownership change. The continued experience would generally be transferred to the

acquiring, surviving or new entity.

It is proposed that this change become effective 12:01 A.M., JULY 1, 1990, applicable to ownership changes on or after that date.

**Impact:**

This item will result, with limited exception, in the continuation of an entity's experience when an ownership change occurs. It will provide that entities with good experience continue to benefit from their past record of effective loss control. This change will also prevent debit rated operations from escaping the impact of their poor loss history simply by undergoing a change in ownership.

The current system provides that the experience of the acquired entity be used as of the date of the change in future ratings of the acquiring entity. If the acquiring entity is experience rated, its modification applies to the acquired entity as of the date of the change. This item will necessitate the recalculation of experience modifications for the acquiring entity and in some cases, the selling entity.

The acquiring entity's rating will be recalculated to include the experience of the acquired entity. If the seller has retained any of its operations sufficient to be experience rated, its rating will be recalculated to exclude the experience for the disposed of entity.

Due to the impact on experience rating calculations, prompt notice that an ownership change has occurred is essential. Accordingly, this item includes a provision requiring that policyholders notify their carrier in writing within 90 days of an ownership change. Failure to comply can result in a delay in the recalculation of the modification until the next anniversary rating date.

**Implementation:**

In order to implement this item, the attached Exhibit I outlines the changes which will be required in the Experience Rating Plan Manual. Exhibit II is a new endorsement designed to inform policyholders of the necessity of prompt reporting of ownership changes. Form WC 00 04 14 will become part of the Forms Manual of Workers Compensation and Employers Liability Insurance.

## EXHIBIT I

## EXPERIENCE RATING PLAN MANUAL

CURRENT PHRASEOLOGYPART ONE  
DESCRIPTION OF THE PLAN

## A. GENERAL EXPLANATIONS

## 1. Plan is Mandatory

The application of this Plan is mandatory for all eligible insureds.

PART TWO  
OPERATION OF THE PLAN

## C. EXPERIENCE TO BE USED IN A RATING

## 10. NONE

PROPOSED PHRASEOLOGYPART ONE  
DESCRIPTION OF THE PLAN

## A. GENERAL EXPLANATIONS

## 1. Plan is Mandatory

The application of this Plan is mandatory for all eligible insureds. Any action taken in any form to evade the application of an experience modification determined in accordance with this Plan is prohibited. Appeals involving the application of these rules shall be resolved through the applicable administrative appeals process.

PART TWO  
OPERATION OF THE PLAN

## C. EXPERIENCE TO BE USED IN A RATING

10. Recalculated Experience Modification  
Due to a Change in Ownership

a. Part Three, Administration of the Plan provides rules regarding the continuation or exclusion of experience when an entity undergoes a change in ownership. Unless excluded under the provisions of rule B.2. of Part Three, such experience shall be retained in future ratings in accordance with the following procedure:

(1) the experience modification of the new owner shall be revised to include the past experience of the acquired entity, subject to rule C.2. Experience Period.

(2) if the new owner is not experience rated, an experience modification shall be calculated utilizing the experience of the acquired entity together with any applicable existing experience.

EXHIBIT I

EXPERIENCE RATING PLAN MANUAL

CURRENT PHRASEOLOGY

PROPOSED PHRASEOLOGY

PART TWO  
OPERATION OF THE PLAN

PART TWO  
OPERATION OF THE PLAN

C. EXPERIENCE TO BE USED IN A RATING

C. EXPERIENCE TO BE USED IN A RATING

10. Recalculated Experience Modification  
Due to a Change in Ownership

(3) if, based on its ownership in other entities, the previous owner continues to be experience rated after the change in ownership, its experience modification shall be revised to exclude all experience of the relinquished entity.

b. Experience modifications in accordance with (1), (2) and (3) above shall be calculated and applied as follows:

(i) If the first written reporting of the ownership change by either the acquiring entity or acquired entity to their carrier occurs within 90 days of the date of the change, the calculation of the revised modification(s) shall be as of the date of the change.

(ii) If the first written reporting of such change occurs more than 90 days after the date of the change, the calculation of the revised modification(s) shall be as of the next anniversary rating date following the earliest notice either carrier received of the change.

## EXHIBIT I

## EXPERIENCE RATING PLAN MANUAL

CURRENT PHRASEOLOGYPART THREE  
ADMINISTRATION OF THE PLAN

## A. COMBINATION OF ENTITIES

2. Determination of majority ownership interest is based on the following:
  - a. majority of issued voting stock.
  - b. majority of the members if no voting stock is issued.
  - c. majority of the board of directors or comparable governing body if a. or b. is not applicable.
  - d. participation of each general partner in the profits of a partnership. Limited partners are not considered in determining majority interest.
3. If the rules above provide for more than one possible combination of entities, the combination involving the most entities shall be made. However, the experience of any entity may be used in only one combination.

## NONE

(Proposed change moves NOTE from Section B - OWNERSHIP CHANGES to Section A - COMBINATION OF ENTITIES)

PROPOSED PHRASEOLOGYPART THREE  
ADMINISTRATION OF THE PLAN

## A. COMBINATION OF ENTITIES

NO CHANGE

**NOTE:** Ownership interest held by an entity as a fiduciary, is considered in determining majority ownership interest. Such an entity's total ownership interest shall also include any ownership held in a nonfiduciary capacity.

For purposes of this rule, fiduciary does not include a debtor in possession, a trustee under a revocable trust or a franchisor.

## EXHIBIT I

## EXPERIENCE RATING PLAN MANUAL

CURRENT PHRASEOLOGYPART THREE  
ADMINISTRATION OF THE PLAN

## B. OWNERSHIP CHANGES

Changes in ownership interest may affect the continued use of an entity's experience in future experience ratings. Based on the rules of this section of the Plan, when a change occurs, a determination shall be made to exclude or retain an entity's experience.

~~NOTE: Ownership interest held by an entity as a fiduciary, is considered in determining majority ownership interest. Such an entity's total ownership interest shall also include any ownership held in a nonfiduciary capacity.~~

~~For purposes of this rule, fiduciary does not include a debtor in possession, a trustee under a revocable trust or a franchisor.~~

~~1. Exclude Experience~~

~~The experience for any entity undergoing a change shall be excluded from future experience ratings if the:~~

- ~~a. entire ownership interest after the change had no ownership interest before the change.~~
- ~~b. collective ownership of all those having an interest in an entity both~~

PROPOSED PHRASEOLOGYPART THREE  
ADMINISTRATION OF THE PLAN

## B. OWNERSHIP CHANGES

NO CHANGE

For purposes of this Plan, a change in ownership includes any of the following:

- a. sale, transfer or conveyance of all or a portion of an entity's ownership interest.
- b. sale, transfer or conveyance of an entity's physical assets to another entity which takes over its operations.
- c. merger or consolidation of two or more entities.
- d. formation of a new entity subsequent to the dissolution or non-operative capacity of an entity.
- e. voluntary or court mandated establishment of a trustee or receiver, excluding a debtor in possession, a trustee under a revocable trust or a franchisor.

1. Continuation of Experience

Unless excluded under rule 2, the experience for any entity undergoing a change in ownership shall be transferred to the experience ratings of the acquiring, surviving or new entity.

EXCEPTION: If an entity disposes of part of its operations but otherwise continues to operate its business,



EXHIBIT I

EXPERIENCE RATING PLAN MANUAL

CURRENT PHRASEOLOGY

PROPOSED PHRASEOLOGY

PART THREE  
ADMINISTRATION OF THE PLAN

PART THREE  
ADMINISTRATION OF THE PLAN

B. OWNERSHIP CHANGES

B. OWNERSHIP CHANGES

~~before the change and after the change amounts to either:~~

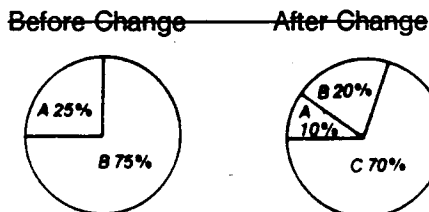
or if a multiple entity risk disposes of one or more entities whose statistical data has been combined on a single policy, the experience shall continue to be used in future experience ratings of the seller unless the rating organization is furnished with the appropriate experience to provide for transfer of the data to the acquiring entity.

~~1. less than 1/3 ownership before the change, or~~

~~2. less than 1/2 ownership after the change.~~

~~EXCEPTION: When a change in ownership takes place among members of an immediate family, the experience for all entities shall be retained in future experience ratings of the risk. For purposes of this rule, members of an immediate family shall include a spouse, father, mother, son, daughter, brother, sister, half-brother, half-sister, step-brother, step-sister, step-child, step-parent, grandchild or grandparent.~~

Example of b.:



~~The experience developed before the change will be excluded from future experience ratings.~~

~~NOTE: Future experience ratings of a risk shall retain all experience up until the date of the change. This includes any part of its operations which may have been sold, discontinued, or self-insured.~~

## EXHIBIT I

## EXPERIENCE RATING PLAN MANUAL

CURRENT PHRASEOLOGYPART THREE  
ADMINISTRATION OF THE PLAN

## B. OWNERSHIP CHANGES

~~c. If the experience of a risk is to be excluded, the experience modification no longer applies as of the date of the change. An experience modification of 1.00 (unity) shall apply effective the date of the change, unless acquired by an entity with an existing experience modification.~~

~~2. Retain Experience~~

~~The experience of any entity undergoing a change shall be retained in future experience ratings if not excluded under B.1. For example, the experience of all entities involved in a merger or consolidation is retained.~~

PROPOSED PHRASEOLOGYPART THREE  
ADMINISTRATION OF THE PLAN

## B. OWNERSHIP CHANGES

2. Exclusion of Experience

The experience for any entity undergoing a change in ownership shall be excluded from future experience ratings only if each of the following conditions a., b. and c. are met.

a. The change must be a material change such that the:

(1) entire ownership interest after the change had no ownership interest before the change or,

(2) the collective ownership of all those having an interest in an entity both before the change and after the change amounts to either less than 1/3 ownership before the change, or less than 1/2 ownership after the change.

b. The material change in ownership is accompanied by a change in operations sufficient to result in reclassification of the governing classification.

c. The material change in ownership is accompanied by a change in the process and hazard of the operations.

## EXHIBIT I

## EXPERIENCE RATING PLAN MANUAL

CURRENT PHRASEOLOGYPART THREE  
ADMINISTRATION OF THE PLAN

## B. OWNERSHIP CHANGES

## C. FILING REQUIREMENT

When an ownership change occurs, the carrier shall report the details of such change to the appropriate rating organization. This may be done by filing the Confidential Request for Information form (see ERM-14 form in Appendix) or by submitting the information in narrative form on the letterhead of the insured, signed by an officer of the company.

The rating organization will determine the type of change and combinability of the entities involved.

PROPOSED PHRASEOLOGYPART THREE  
ADMINISTRATION OF THE PLAN

## B. OWNERSHIP CHANGES

3. If the experience of an entity is to be excluded, the experience modification no longer applies as of the date of the change. An experience modification of 1.00 (unity) shall apply effective the date of the change, unless acquired by an entity with an existing experience modification.
4. Future experience ratings of a risk shall retain all experience for any part of its operations which may have been discontinued or self-insured.

NOTE: Refer to Part Two, Operation of the Plan for rules regarding the recalculation of experience modifications when an ownership change occurs.

## C. FILING REQUIREMENT

NO CHANGE

## EXHIBIT II

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 00 04 14

ORIGINAL PRINTING

EFFECTIVE JULY 1, 1990

STANDARD

---

**NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT**

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

**Note:**

Use this endorsement on all policies to notify the insured that changes in ownership, as defined in the Experience Rating Plan Manual, must be reported to the insurer within 90 days of the change