



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

July 30, 2007

CIRCULAR LETTER NO. 2065

**Revisions to the Experience Rating Plan Manual for Workers Compensation
and Employers Liability Insurance and The Massachusetts Workers'
Compensation Statistical Plan**

The Massachusetts Division of Insurance ("DOI") recently approved revisions to the Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance and The Massachusetts Workers' Compensation Statistical Plan. The revisions pertain to the following two items:

- The streamlining of the rules triggering an experience rating based on the Aggravated Inequity Rule.
- The exclusion of Catastrophe Code 87 losses from the calculation of an experience rating modification.

The revised pages are attached for your reference. The revised pages will also be posted on the Bureau's web site soon after the distribution of this circular letter.

If you have any questions regarding these changes, please contact the undersigned at ext. 567 or sannis@wcribma.org.

Sheila Annis
Vice-President, Data Operations

Attachments



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

July 2, 2007

The Honorable Nonnie S. Burnes
Commissioner of Insurance
Division of Insurance
One South Station
Boston, MA 02110-2208

RE: Revisions to the Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance and The Massachusetts Workers' Compensation Statistical Plan

Dear Commissioner Burnes:

Enclosed for your review and approval are revisions to the Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance and a corresponding revision to the Massachusetts Workers' Compensation Statistical Plan.

The three items to be reviewed and approved pertain to:

- The streamlining of the rules triggering an experience rating based on the Aggravated Inequity Rule.
- The exclusion of Catastrophe Code 87 losses from the calculation of an experience rating modification.

Enclosed are brief descriptions of the proposed changes and proposed revised pages to the Experience Rating Plan Manual and to the Massachusetts Workers' Compensation Statistical Plan. The proposed changes are shown in red, bold, italic, Times New Roman font and the elimination of text is indicated by strikes through the text.

Thank you for your attention to this matter. Please contact Neil Gibbons at 617-646-7568 with any questions regarding this filing.

Sincerely,

A handwritten signature in cursive script that reads "Ellen F. Keefe".

Ellen F. Keefe, CPCU
Vice President and General Counsel

cc: Kevin Beagan, Director, SRB
Walter Horn, PhD, SRB
Caleb Huntington, SRB
Paul F. Meagher, President, WCRIB
Robert McCarthy, Vice President, Actuary, WCRIB
Sheila Annis, Vice President, Data Operations, WCRIB
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THE WORKERS' COMPENSATION RATING & INSPECTION BUREAU OF MASSACHUSETTS

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Proposal to Amend the Aggravated Indemnity Rule

PROPOSAL

To revise the Aggravated Inequity Rule contained in the Experience Rating Plan Manual in order to allow the reporting carrier to report the correction to the statistical data when the carrier identifies an aggravated inequity situation.

BACKGROUND

The current process, for an employer to receive a revision to their experience rating modification under the Aggravated Inequity Rule, is to apply to the Bureau in writing for the revision of the modification, when all the pertinent circumstances are met. These requests are made not only by the employers and their agents but also by the carriers reserving, closing and reporting the claim(s) which qualify the rating for a revision under the Aggravated Inequity Rule. The Bureau's procedure is to first request verification of the circumstances from the carrier and, then, to direct the carrier to supply the correction to the statistical data. While the process is necessary for verification when the employer or agent bring the situation to the attention of the Bureau, the process is redundant when a carrier, who has confirmed the situation, requests a revision under the Aggravated Inequity Rule.

PURPOSE

To eliminate the need for a carrier to get the Bureau's approval for submitting a USR correction to revise an experience rating modification under the Aggravated Inequity Rule, thereby streamlining the process.

IMPLEMENTATION

Effective immediately upon approval.

MANUAL PAGES:

Experience Rating Plan Manual: State Special Rules, Rule 4-B-2-d

Statistical Plan Pages: Part I, Section II, pages 3-4; Part I, Section III, page 2; Part I, Section V, page 4

RULE 4—APPLICATION AND REVISION OF EXPERIENCE RATING MODIFICATIONS**B. INCLUSION OF PAYROLL AND LOSSES****2. Revision of Losses****Add the following to Rule 4-B-2:**

In certain circumstances, 4th and 5th reports and their corrections may be used in the production of experience rating modifications. *Refer to Rule 4-B-2-e for more information.*

Add Rule 4-B-2-d as follows:**d. Aggravated Inequity Rule**

Experience modifications are generally based on claim reserves valued as of specific valuation dates determined by the **Massachusetts Workers' Compensation Statistical Plan**.

When all of the circumstances listed below are met, then ~~in certain circumstances~~, the employer may send a written request to the Bureau to revise the experience modification to reflect a closed amount instead of a reserved amount.

When all the circumstances listed below are met and identified by the insuring and reporting carrier, the carrier may send a correction to the original statistical report, identified as a correction due to an aggravated inequity.

~~Such~~ Requests from employers and agents or corrections from the carrier must be received by the Bureau within 30 days of the rating effective date or rating issue date (whichever is later), or within a reasonable time thereafter with good cause shown. The following circumstances must all be met:

- (i) One or more of the claims reflected in an issued experience modification is based on a reserve (i.e., the claim had not yet been closed); and
- (ii) The employer has learned that such claim(s) have since closed; and
- (iii) The claim(s) closed between the normal valuation date and the effective date of the experience modification; and
- (iv) The claim(s) closed for amounts less than the reserved amounts.

**MASSACHUSETTS WORKERS' COMPENSATION
STATISTICAL PLAN**

Effective: *approval date will be effective date*
Distributed: *June, 2007*
Part I – Unit Statistical Reporting

Section II
GENERAL INSTRUCTIONS
Pages 3-4

4. Revision of Losses

See correction of losses in Section III for instructions concerning the reporting procedures to revise losses due to the circumstance listed below.

It is not permissible to revise values between two valuations because of departmental or judicial decisions or because of developments in the nature of injury.

Revisions of losses between valuations are acceptable only when:

- a. There are errors in the previously reported information. All reports containing the error must be revised.
- b. Reimbursement from the Second Injury Fund is anticipated. All previously reported valuations that did not reflect the anticipated recovery must be revised.
- c. A claim is found to have caused aggravated inequity in the experience rating modification as defined in the Experience Rating Plan *by either the carrier or the Bureau.* ~~valuations that impact the inequitable experience rating must be revised by the carrier immediately upon notification by the Bureau.~~
- d. A claim, or any part thereof, has been declared noncompensable as defined in ~~the Experience Rating Plan~~ *Section III-A-2*, all prior reports (valuations) of the claim must be revised within 60 days.
- e. The carrier has received subrogation recovery due to an action against a third party. The subrogation may be the result of an action by either the carrier or claimant. All valuations (reports) of the loss must be revised within 60 days of receipt of the recovery.
- f. It has been determined that one or more claims should be reported with catastrophe code 48. Refer to Section VII Loss Data, page 22 catastrophe code.

**MASSACHUSETTS WORKERS' COMPENSATION
STATISTICAL PLAN**

Effective: approval date will be effective date
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Part I – Unit Statistical Reporting

Section III
CORRECTIONS AND RE-VALUATIONS
Page 2

3. Anticipation of Recovery from Second Injury Fund

Corrections must be submitted upon receipt or anticipated receipt of reimbursement from the Second Injury Fund. Paid and incurred loss amounts of all prior reports (valuations) of the claim must be adjusted to reflect the impact of the recovery. All prior reports (valuations) that exceed the carriers anticipated final paid amount must be corrected. Cost of recovery is added into final paid in a subrogation situation.

4. Receipt of Subrogation Recovery from a Third Party

Corrections must be submitted within 60 days of obtaining a subrogation recovery from a third party. Paid and Incurred Loss amounts of all prior reports (valuations) of the claim must be adjusted to reflect the impact of the recovery. All prior reports (valuations) where the amounts exceed the carrier's final paid amount must be corrected. Cost of recovery is added into final paid *amount* in a subrogation situation.

5. Aggravated Inequity

Corrections must be submitted when the Bureau (*upon request*) or the carrier determines that the difference between the reported incurred and the final paid losses of a claim, that closes prior to the issuance of the experience rating modification, constitutes an aggravated inequity. The necessary corrections and report levels are *to be submitted upon the Bureau's request or once the carrier determines that the change between reported incurred and final paid losses constitutes an aggravated inequity.* ~~The necessary corrections and report levels are requested by the Bureau staff upon determination of an aggravated inequity.~~

6. Formerly Self-Insured's Deposit Adjustments

If any of the formerly self-insured's rating plan deposit is returned to the insured, then a correction to the first report must be submitted when the deposit is returned.

7. Completion or Change in the Audit

Corrections to the first report must be submitted whenever an audit is revised, or upon completion of the audit when the first report was submitted based on estimated exposure.

B. Re-valuation's

Losses are revalued and reported annually as the subsequent report of losses described in Section II Part D. Subsequent valuations are reported in the same manner as corrections to losses.

**MASSACHUSETTS WORKERS' COMPENSATION
STATISTICAL PLAN**

Effective: *approval date will be effective date*

Distributed: *June, 2007*

Part I – Unit Statistical Reporting

**Section V
HEADER LINK DATA**

Page 4

5. Correction Type (Corr. Type)
- a. Characteristic: Alphabetic
 - b. Length: 1
 - c. Definition: A code for correction reports which indicates the record types that change.
 - d. Requirements: Report the 1-digit alphabetic code that indicates the type of correction report being submitted. Subsequent reports must be coded with correction type L.

<u>Code</u>	<u>Description</u>
H	Header Record Correction (link all reports, non-link elements first report only)
E	Exposure Record Correction (first reports only)
L	Loss Record Correction - Not an Aggravated Inequity
T	Total Record Correction
M	Corrections to Multiple Record Types - Combinations of corrections to header, exposure, loss, total records or ICRs, Aggravated inequity corrections must be reported separately.
A	Loss Record Correction due to an aggravated inequity. This type of correction can not be reported on a multiple record type.
C	Individual Case Report (ICR) included

Note: A loss correction due to an Aggravated Inequity is submitted only upon the Bureau's request *or when the carrier identifies the circumstances that qualify the experience rating for a revision under the Aggravated Inequity Rule of the Experience Rating Plan Manual.* When an experience modification based on reserves at the normal valuation date and compared with costs of the claims closed between such normal valuation date and the next effective date of rating results in an aggravated inequity, the Bureau will request a revised unit report from the carrier and revise the experience rating.

Proposal to Adopt Catastrophe Code 87

PROPOSAL

To revise the Experience Rating Plan Manual, "State Rule Exceptions" Rule 1-C-3-a regarding the use of Catastrophe Code 87 to report occupational disease claims for losses resulting from the rescue, recovery and clean up work at the World Trade Center occurring between the dates of September 11, 2001 and September 12, 2002. Specifically, such losses should be excluded from the calculation of an employer's experience rating modification, provided the employee's injury must have occurred within the jurisdiction of New York. Additionally, the claimant must be filing for benefits under New York law. This rule applies to experience rating modifications with anniversary rating dates of June 1, 2002 through May 31, 2007.

BACKGROUND

Catastrophe Code 87 is used to report occupational disease claims resulting from the rescue, recovery and clean up work at the World Trade Center occurring between the dates of September 11, 2001 and September 12, 2002. In order for losses to be included as Catastrophe Code 87, the employee's injury must have occurred within the jurisdiction of New York and the claimant must be filing for benefits under New York law. New York statutory change A11944 extends the time for employees injured in the rescue, recovery and clean up operations after the September 11, 2001 terrorist attacks on the World Trade Center to file a claim for workers' compensation benefits until August 14, 2007. Employees selecting MA benefits would not qualify for NY A11499.

Though there is an administrative need for including Catastrophe Code 87 in both the Statistical Plan and the Experience Rating Plan, the practical need is very unlikely. Reporting will ONLY occur in the case of a worker, whose payroll was recorded as belonging to a MA location, but was injured while working on the September 11, 2001 event's clean up in New York jurisdiction and filed for New York claim benefits.

Experience Rating is intended to measure an individual employer's success in maintaining a safe workplace by factoring the employer's payroll and loss history into a formula designed to project that employer's propensity for future losses. Using historical loss history does offer some indication of the employer's true loss potential when such losses can reasonably be expected to repeat.

PURPOSE

Because the events surrounding September 11, 2001 are of a unique and unprecedented nature, resulting Catastrophe Code 87 losses are not indicative of an employer's true loss potential in the future. Therefore, it is appropriate to exclude them from the calculation of the experience rating modification.

Proposal to Adopt Catastrophe Code 87

IMPLEMENTATION

Effective: Ratings effective June 1, 2002 through May 31, 2007.

EXPERIENCE RATING PLAN MANUAL:

State Special Rules, effective July 1, 2006, of the 2003 Edition, "State Rule Exceptions", and Change Rule 1-C-3-a

STATE RULE EXCEPTIONS

RULE 1—GENERAL EXPLANATIONS

C. DEFINITIONS

3. Losses

Change Rule 1-C-3-a as follows:

Except for non-compensable claims, no loss is excluded from the experience of a risk even if the employer was not responsible for the accident that caused such loss. For instructions on non-compensable claims, refer to the Massachusetts Rule 4-B-2-f.

Change Exception to Rule 1-C-3-a as follows:

Exception: Losses reported with Catastrophe Number 48 are excluded from experience rating calculations. Catastrophe Number 48 claims include all workers compensation claims directly attributable to the September 11, 2001 attacks with accident dates of September 11 through September 14, 2001. This rule applies to experience rating modifications with anniversary rating dates of June 1, 2002 through May 31, 2006.

Exception: Losses reported with Catastrophe Number 87 are excluded from experience rating calculations. Catastrophe Number 87 claims include all workers compensation occupational disease claims resulting from the rescue, recovery and clean up work at the World Trade Center occurring between the dates of September 11, 2001 and September 12, 2002. The employee's injury must have occurred within the jurisdiction of New York and the claimant must be filing for benefits under New York law. This rule applies to experience rating modifications with anniversary rating dates of June 1, 2002 through May 31, 2007.

6. Statistical Plan

Add the following to Rule 1-C-6:

In certain circumstances, fourth and fifth reports and corrections to those reports may be used in experience rating calculations. Refer to Rule 4-B-2-e.

In Massachusetts, the **Massachusetts Workers' Compensation Statistical Plan** is used.

Add the following to Rule 1-C:

9. Massachusetts Workers Compensation and Employers Liability Insurance Manual

The **Workers' Compensation and Employers Liability Insurance Manual** ("MA Manual") is the Massachusetts equivalent to NCCI's Basic Manual. Massachusetts users should substitute 'MA Manual' for 'Basic Manual' throughout this Plan.

D. ADMINISTRATION

Change Rule 1-D-4 as follows:

4. The designated carrier is issued the experience rating worksheet when the rating is calculated. The WCRIB will provide a copy of the rating to the insured upon request. Other parties, such as agents, risk managers or carriers (other than the insuring carrier) can obtain a copy of the worksheet with the permission of the insured at a cost. The permission of the insured is presented through a "Letter of Authority", which must be on the insured's stationery and must be signed by the insured. An e-mail or a fax from the insured is considered the insured's stationery.

RULE 2—EXPERIENCE RATING ELEMENTS AND FORMULA

C. ELEMENTS OF EXPERIENCE RATING FORMULA AND WORKSHEET