

## STATE RULE EXCEPTIONS

## RULE 1—GENERAL EXPLANATIONS

C. DEFINITIONS *Effective 11 Jul 2007*

## 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 *Effective 01 Jul 2006*

Change Rule 1-D-4 as follows:

4. The designated carrier is issued the experience rating worksheet when the rating is calculated. The WCRIIB 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 *Effective 01 Jul 2006*

## 5. Actual Incurred Losses

Change Rule 2-C-5 as follows:

For purposes of experience rating, Actual Incurred Losses are those reported according to the *Statistical Plan*.

## 6. Actual Primary Losses

Change Rule 2-C-6 as follows:

Actual Primary Losses are the portion of the Actual Incurred Losses that are used at full value in the experience rating calculation. For each actual incurred loss, the amount up to \$5,000 is considered primary.

## 8. Actual Excess Losses

Change Rule 2-C-8 as follows:

Actual Excess Losses are determined by subtracting the Actual Primary Losses from the Actual Incurred Losses. Within the experience rating calculation, the excess portion of a loss reflects its severity and is given partial weight based on the size of the risk. As risk size increases, so does the amount of the actual excess losses used in the calculation.

### 13. Limitation of Losses Employed in a Rating

#### a. Single and Multiple Claim Limitation

Change Basic Loss Limitation Table of Rule 2-C-13-a as follows:

##### • Basic Loss Limitation Table

| If . . .                                | Then . . .                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| An accident involves only one person    | <ul style="list-style-type: none"> <li>• The loss is subject to the per claim accident limitation</li> <li>• The actual primary loss is subject to the maximum primary value of \$5,000, even if the loss does not exceed the per claim accident limitation</li> </ul>                                         |
| An employers liability-only loss exists | <ul style="list-style-type: none"> <li>• The loss is subject to the employers liability per claim accident limitation</li> <li>• The actual primary loss is subject to the maximum primary value of \$5,000, even if the loss does not exceed the employers liability per claim accident limitation</li> </ul> |

## E. EXPERIENCE TO BE USED IN A RATING *Effective 01 Jul 2006*

### 2. Non-Affiliate Self-Insurer and Non-Affiliate Carrier Data

Add the following to Rule 2-E-2:

In Massachusetts, the terms "non-affiliate self-insurers" and "non-affiliate carriers" are not used. For the purpose of Massachusetts' users, this section applies to self-insurance groups (SIGs) and non-members carriers.

Change Rule 2-E-2-a as follows:

- a. Experience of risks insured by non-member carriers and SIGs may be included in experience ratings.

Change Rule 2-E-2-b as follows:

- b. All non-member carriers and SIGs must get approval from the MA Bureau before submitting statistical data.

Change Rule 2-E-2-c as follows:

- c. The data must be submitted to the MA Bureau according to the rules of the **Massachusetts Statistical Plan**.

Change Rule 2-E-2-d as follows:

- d. Non-member carrier and SIG data correctly submitted to the MA Bureau will be used to determine experience modification and merit rating eligibility and will be used in the calculation of Massachusetts experience modifications and merit ratings distributed to members, non-members, and SIGs.

Change Rule 2-E-2-e as follows:

- e. Massachusetts SIG data will not be used in interstate experience ratings issued by NCCI.

Add the following to Rule 2-E:

#### 4. Self-Insurer's Data

The data of an employer who is a licensed self-insurer under Massachusetts General Law, c. 152, § 25A(2), is not used in an experience rating modification except when recommended by the Bureau Manager and approved by the Commissioner of Insurance.

**RULE 3—OWNERSHIP CHANGES AND COMBINATION OF ENTITIES****F. EVASION OF EXPERIENCE RATING MODIFICATION** *Effective 01 Jul 2006*

Change Rule 3-F-2 as follows:

In such circumstances, the rating organization may obtain any information that indicates evasion or improper calculation or application of experience rating modifications due to actions included, but not limited to, those listed in Rule 3-F-1.

The rating organization will act to ensure the proper calculation and application of all current and preceding experience rating modifications impacted by these actions.

**RULE 4—APPLICATION AND REVISION OF EXPERIENCE RATING MODIFICATIONS****B. INCLUSION OF PAYROLL AND LOSSES** *Effective 11 Jul 2007***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 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. 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.

Add Rule 4-B-2-e as follows:

**e. Recalculation Due to Change in Claim Values****1. Method of Recalculation**

For each open claim in excess of \$5,000 at third report, except those involving permanent and total disability or death, the rating organization designated by the Commissioner pursuant to M.G.L. c. 152, § 65C, shall compare the value of such claim at third report with the final incurred value of such claim reported closed at fourth report. To the extent that the final total incurred values of the aggregate of all such claims of any insured reflect a change of 20% or more from the prior total valuation of such claims at third report, the rating organization shall recalculate the experience modification which utilized such third report.

In addition, for each open claim in excess of \$5,000 at third report, except those involving permanent and total disability or death, the rating organization shall compare the value of such claim at third report with the final incurred value of such claim reported closed at fifth report. To the extent that the final total incurred values of the aggregate of all such claims of any insured reflect a change of 20% or more from the total valuation of such claims at third report, the rating organization shall recalculate the experience modification which utilized such third report.

No recalculations shall be performed which included effects of change on any claim which has not been closed at the time of such recalculation.

The result of any recalculation performed under this rule shall appear as a credit or debit on the insured's bill.

**2. Failure to Pay**

Failure to pay any amounts owed an insurer as a result of recalculation of an experience modification pursuant to this regulation, shall constitute nonpayment of premium and be grounds for termination of the policy.

Add Rule 4-B-2-f as follows:

**f. Recalculation Due to Determination of Non-Compensability**

If a claim is found to be non-compensable as defined in Section III-A-2 of the *Massachusetts Workers' Compensation Statistical Plan*, then the claim should be reported at the value that the carrier actually paid out net of any recovery, as instructed by the *Statistical Plan*. An experience modification or merit rating, however, will not include the experience of any claim that was determined to be non-compensable.

**C. TYPES OF EXPERIENCE RATING MODIFICATIONS** *Effective 01 Jul 2010***1. Preliminary Modifications**

Change Rule 4-C-1 as follows:

A preliminary modification uses existing rating values that are expected to change pending regulatory action on a rate filing. The preliminary modification must be applied until the pending rate filing is approved and the experience rating modification is recalculated using the new rating values.

**2. Final Modifications**

Rule 4-C-2 does not apply in Massachusetts.

**3. Contingent Modifications****c. Exceptions to Minimum Data Requirements**

Change Rule 4-C-3-c as follows:

Rules 4-C-3-c(2) and (3) do not apply in Massachusetts.

**E. CHANGES IN EXPERIENCE RATING MODIFICATIONS** *Effective 01 Jul 2006*

Changes in Experience Rating Modifications Table

Add the following to Exclusions:

Recalculation according to Rule 4-B-2-e.

**RULE 5—SPECIAL RATING CONDITIONS****A. EMPLOYEE LEASING/PROFESSIONAL EMPLOYER ORGANIZATIONS** *Effective 01 Jul 2006*

Rule 5-A does not apply in Massachusetts. Refer to MA Regulation 211 CMR 111.00 contained in the *Massachusetts Workers' Compensation and Employers Liability Insurance Manual*.

**B. ~~EX-MEDICAL EXPERIENCE~~** *Effective 01 Sep 2012*

## MISCELLANEOUS RULES

**MERIT RATING PLAN** *Effective 01 Jul 2006*

The **Experience Rating Plan Manual** rules apply to the Merit Rating Program, subject to the following:

**1. Purpose**

The object of the Merit Rating Program is to provide a revised pricing mechanism for risks too small to qualify for experience rating to share in the loss experience they generate.

**2. Eligibility**

A risk is eligible for the Merit Rating Program if it has an average Subject Premium over the last three policy years of \$500 or more, unless the risk is eligible for experience rating on either an intrastate or interstate basis.

**3. Application**

The Merit Rating Program Adjustment, expressed as a debit or credit factor, is applied to the Subject Premium. The resultant premium, if a debit or credit, is added to or subtracted from the Subject Premium. This becomes the Standard Premium. Merit Rating Program Adjustment factors will appear on all Merit Rating worksheets when applicable.

The Merit Rating Program does not apply to an interstate rated risk with Massachusetts exposure. If the risk is eligible for interstate experience rating, an interstate experience modification that includes Massachusetts experience will be issued.

**4. Merit Rating Adjustment**

The merit rating credits and debits, which are based on lost-time claims (i.e., claims reported with incurred indemnity) that occurred during the experience period, are as follows:

| Number of Lost-Time Claims | Merit Rating Adjustment |
|----------------------------|-------------------------|
| 0                          | 5% credit               |
| 1                          | No credit or debit      |
| 2 or more                  | 5% debit                |

**Exception:** All claims reported with Catastrophe Number 48 are excluded from merit rating.

**ALL RISK ADJUSTMENT PROGRAM (ARAP)** *Effective 01 Sep 2007*

The **Experience Rating Plan Manual** rules apply to All Risk Adjustment Program (ARAP), subject to the following:

**1. Purpose**

The object of the ARAP is to provide a revised pricing mechanism for experience rated risks to share the underwriting losses they generate.

**2. Eligibility**

A risk is eligible for the ARAP if it is eligible for intrastate or interstate experience rating, and the "R" value for the insured is greater than 1.0 as shown in 4-c.

**3. Application**

The ARAP surcharge factor, expressed as a debit factor, is calculated following calculation of the experience rating modification and appears on the experience rating worksheet when applicable. This surcharge factor is applied to Standard Premium after experience rating to surcharge risks with a greater record of losses than expected under the experience rating plan.

Experience rated risks with multistate operations are subject to the ARAP for that portion of the risk in Massachusetts. The ARAP surcharge is:

- Calculated using Massachusetts losses and expected losses, and
- Applied to the Massachusetts portion of the risks

**4. Calculation**

The ARAP surcharge factor for eligible risks is determined as follows:

- After the calculation of the experience modification factor (M) for a particular risk, the weighted test ratio (R) is calculated.

- b. To determine whether the “R” value for the insured is greater than 1.0, the following information is needed from the experience rating calculation using Massachusetts data only:

|    |   |                                                                          |
|----|---|--------------------------------------------------------------------------|
| W  | = | Weighting value, calculated on an intrastate basis                       |
| A  | = | Actual losses, as limited on a per accident basis                        |
| Ap | = | Actual primary losses                                                    |
| E  | = | Total expected losses                                                    |
| Ep | = | Expected primary losses                                                  |
| M  | = | Normal experience rating modification, calculated on an intrastate basis |

- c. To determine the “R” value (weighted test ratio), the numbers derived from a. above are inserted into the formula:

$$R = \frac{((0.5 - 0.5W) \times Ap)}{(M \times Ep)} + \frac{((0.5 + 0.5W) \times A)}{(M \times E)}$$

- d. To determine the surcharge factor (called S) for qualified risks, the following formula is used:

$$S = 1 + \left[ \frac{(.08 \times E \times ((R - 1)^{1.25}))}{(E + 3)^{0.5}} \right]$$

In the calculation for S, E (Total expected losses) is divided by one thousand and may not exceed 40, while R may not exceed 2.0.  

- e.   The surcharge factor is limited to a maximum of 1.25.