

November 30, 2004

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Workers Compensation

Item E-1379 – 2003 Experience Rating
Plan Manual for Workers Compensation
and Employers Liability Insurance

The Bureau has adopted and the North Carolina Commissioner of Insurance has approved a rewrite of the *Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance*.

The attached Filing Memorandum describes the changes which have been approved to become effective July 1, 2004, applicable to new and renewal business.

Enclosed are copies of the following documents:

- Filing Memorandum
- Users Guide
- Side by side comparison of the previous *Experience Rating Plan Manual* and the newly approved plan.

You are advised to review the manual in its entirety for changes. Please pay special attention to the following changes that have been incorporated into the manual:

- Revisions have been made to the ERM-14 and the ERM-6 forms. The form revisions are located on the NCRB website at www.ncrb.org. These forms have now been made “fillable” so that you can type in the required information and print the form to submit to the NCRB for processing. The website also contains instructions for completion of these forms. **The old ERM-14 and ERM-6 forms will not be accepted after January 1, 2005.**
- Rule 4, C.3.c.2 states that experience rating modifications will be issued for self-insureds even when the minimum data requirements have not been met. (Previously a contingent modification was issued in these cases).

The new release of the *Experience Rating Plan Manual* with a separate *User's Guide*, is currently available from the National Council on Compensation Insurance in both hard copy and internet-based formats.

Sincerely,

Sue Taylor

Workers Compensation Director

ST:dg
C-04-18

FILING MEMORANDUM

ITEM E-1379—2003 EXPERIENCE RATING PLAN MANUAL FOR WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

PURPOSE

The purpose of this item is to introduce a new *Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance*. Similar to the approach taken with the revision of the *Basic Manual* in 2001, the *Experience Rating Plan* has been revised with an emphasis on increasing the ability of users to quickly find the information they need in an electronic environment. In addition, we focused on a plain language approach in recognition of regulatory and customer feedback regarding the existing rules.

BACKGROUND

The *Experience Rating Plan* was last rewritten in 1983. In the 20 years since then, changes have been introduced on an as-needed basis. In 1999, many of the NCCI manuals were made available on our Web site. Essentially, these existing manuals were simply moved to this environment without any alteration. We recognized then that changes were necessary to maximize customer usage of these products. Following up on the 2001 revision of the *Basic Manual*, the proposed 2003 *Experience Rating Plan* is the second in a series of planned rewrite projects impacting NCCI's underwriting-related manuals.

This project, while recognizing the impact on the paper product, is primarily intended to make the manual a more viable product for today's electronic environment. It also responds to customer concerns regarding simplification of the language and presentation of the material.

This item is a paper document and as such, does not fully recreate the appearance, functionality and features that will be available to the user of the new electronic *Experience Rating Plan*. However, it does contain the same rules and information as the electronic version.

We identified four themes that provided the focus for improving this product.

1. Web Friendly—Rewrite the Manual to Be Suitable for the Electronic Environment

The structure of the existing paper version *Experience Rating Plan Manual* does not provide an opportunity to maximize the customer benefits that can be achieved through electronic presentation. Also, customers will appreciate the cleaner layout and use of tables to present complex rules.

Another "ease of use" feature involves the way in which the information will be "chunked." In reading a paper document, we are accustomed to coming to the end of a page and, if in mid-sentence, simply turning the page to continue. To the extent possible, the Web version will present complete sections of text with a minimal need to scroll for additional information.

With a click of the mouse, the Internet user is able to quickly access information in other parts of the new Plan. This feature allows rule references to be linked to the *User's Guide* for an example that illustrates the application of that rule, or for additional information.

The enclosed materials are copyrighted materials of the National Council on Compensation Insurance, Inc. ("NCCI"). The use of these materials may be governed by a separate contractual agreement between NCCI and its licensees such as an affiliation agreement between you and NCCI. Unless permitted by NCCI, you may not copy, create derivative works (by way of example, create or supplement your own works, databases, software, publications, manuals, or other materials), display, perform, or use the materials, in whole or in part, in any media. Such actions taken by you, or by your direction, may be in violation of federal copyright and other commercial laws. NCCI does not permit or acquiesce such use of its materials. In the event such use is contemplated or desired, please contact NCCI's Legal Department for permission.

ITEM E-1379—2003 EXPERIENCE RATING PLAN MANUAL FOR WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

2. Use of Plain Language

Customers have responded very favorably to the plain language presentation of the 2001 *Basic Manual*. This rewrite of the *Experience Rating Plan Manual* has also been written in simpler language and presented in a more suitable way for a general audience. It presents the rules and information in a manner appropriate to the needs of both the entry-level and experienced user. As a result, the revised *Experience Rating Plan Manual* not only contains the rules required for regulator approval but also serves as an improved reference and informational tool.

The proposed Plan rules have been clarified, where necessary, by use of simplified text and by using shorter sentences and paragraphs. Other simplified features include use of bulleted lists when enumerating a list of items. As with the 2001 *Basic Manual*, the new Plan also uses a number of “If ...Then” tables to present information that in its previous text format may have been confusing. An example of this is the transfer of experience rules are presented in the new Plan. The impact of ownership changes on an employer’s experience rating modification is a topic that generates many technical questions each year from NCCI customers. By arranging the transfer of experience rules into If ...Then tables, a difficult topic is simplified.

The existing Plan consists of four parts and an Appendix. The proposed Plan contains five rules and an Appendix. All material contained in the existing Plan has been covered in the rewrite.

A summary of the five rules is as follows:

Rule 1—General Explanations

This rule includes basic information regarding the mandatory nature of the Plan, as well as definitions of commonly used terms. It also includes a section on administrative issues.

Rule 2—Experience Rating Elements and Formula

This rule includes information regarding premium eligibility for the Plan, as well as information concerning the determination of the rating effective date. It provides a definition of all the component parts of the modification calculation formula and a presentation of the formula itself, matching the manner in which it is displayed on an employer’s modification worksheet. This rule also includes a more detailed description of the experience period rule. This is a key rule in that it provides the structure for the amount of data used in a particular modification.

Rule 3—Ownership Changes and Combination of Entities

This rule emphasizes the importance of timely reporting of ownership changes and references the endorsement that prescribes this as part of the workers compensation policy. It also clarifies that the employer, carrier, or agent may submit ownership information. The section of the rule regarding rating organization research references the common practice of using additional information from public records and other sources in the effort to resolve complex ownership change scenarios.

The types of changes that are considered ownership changes for purposes of the Plan are covered in this rule. Because this is an area that generates many questions, the new rule also provides a list of conditions that are not considered changes in ownership. Rule 3 includes the restated combination of entities rule. No substantive changes have been made in these rules.

Rule 3 also includes a section on treatment of experience. This part of the rule uses If ...Then tables to specify the manner in which experience is transferred to a new owner after an ownership change. It includes rules related to the recalculation and application of experience rating modifications as a result of an ownership change. The rare circumstances under which experience is not transferred are also covered in this rule.

New rules regarding evasion of experience rating modifications are also part of Rule 3 and are discussed in detail below under the subhead for the third project theme: Combat mod evasion tactics.

ITEM E-1379—2003 EXPERIENCE RATING PLAN MANUAL FOR WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

Rule 4—Application and Revision of Experience Rating Modifications

This rule provides information related to the use of payroll and losses in the calculation of an experience rating modification. It stipulates the circumstances under which corrections in classifications can impact revisions in modifications. Rule 4 also provides a definition of the various types of modifications, including the minimum data requirements for a contingent modification.

A significant source of customer questions is the issue of experience rating modification application in situations where a risk's policy history includes cancellations, short-term policies, or similar circumstances. Rule 4 addresses this issue and provides for treatment of both single-policy and multiple-policy risks.

Rule 4 also contains information regarding the application of a modification when it changes and either decreases or increases. An If ...Then chart is used to simplify the presentation of this rule.

Rule 5—Special Rating Conditions

The intent in Rule 5 is to group all the various rules that apply for only a small portion of rated risks. Rules 1–4 apply to all rated risks and the user will only need to reference Rule 5 to address special rating conditions. For example, Rule 5 contains the instructions related to the treatment of experience rating modifications involving employee leasing arrangements. It also includes rules regarding ex-medical experience, separate state modifications, and rules specific to contracting risks, such as joint ventures and wrap-up construction projects.

3. Combat Mod Evasion Tactics

Modification evasion is a problematic issue. One of the primary ways a modification has been avoided is through manipulation of the change of ownership rules. A common example is a scenario in which an employer with a debit mod “downsizes” its operations by shifting significant payroll to a “new” entity that is not under common ownership. The original entity keeps the debit modification but because it's applied to a much lower premium base due to the payroll shift, substantial premium dollars are avoided.

The successor entity then presents itself as a new business and obtains a 1.00 unity factor. That 1.00 factor is applied to the operations that should be subject to the debit mod. Because no change occurs in the manner in which this business is operated, it is not uncommon for the “new” entity to subsequently develop a debit mod. At this point, another payroll shift takes place and the cycle of modification and premium evasion continues.

Many state regulators have urged that the Plan rules be strengthened to address this and other similar situations. New rules regarding evasion of experience rating modifications are a part of Rule 3. The rule lists some of the actions that may be taken in an attempt to evade an experience modification, including the scenario mentioned here. This new section also proposes a series of responses that the rating organization may take in dealing with serious cases of evasion.

4. User's Guide—Develop a User's Guide to Provide Additional Information

As part of the effort to expand the *Experience Rating Plan Manual* into a plain language reference and informational tool, we are introducing a new and distinct companion product, the *User's Guide*. This is the same approach as was followed with the new *Basic Manual*. As part of the rewrite, we identified areas where additional explanation or examples would be beneficial to the user's understanding of the rules. The intent is to place this general information as well as other information in the *User's Guide*.

As a result of this change, the *User's Guide* is not being filed for approval. We have provided a copy of the *User's Guide* for informational purposes only. NCCI will make periodic updates to the general information that would assist in the understanding of the rules. None of the information contained in the *User's Guide* will change the rules or the manner in which experience rating modifications are determined. Any changes involving rules that impact premium determination will always be accomplished through the item filing and approval process. The following is a summary of the material that is included in the *User's Guide*:

ITEM E-1379—2003 EXPERIENCE RATING PLAN MANUAL FOR WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

- **Dispute Resolution and Appeals Process**

We've added this new material, which also is contained in the *Basic Manual*. This section of the *User's Guide* provides information regarding resolving a dispute when the insured and carrier disagree over the application of the manual rules, experience modification factor, or other issue. It includes the role NCCI plays in attempting to resolve the dispute as well as generic information concerning the appeals process.

- **Premium Eligibility Examples**

We've included a number of examples to clarify how intrastate- and interstate-rated risks qualify for the Plan under various circumstances.

- **Loss Limitation Examples**

Several examples are included to display the manner in which loss limitations apply, including disease losses.

- **Experience Period Examples**

This part of the guide includes examples in support of the rules that control the amount of data used in a particular rating. This includes the time frame in which policy effective dates must occur to be eligible for inclusion in a particular rating. Also included is a reference chart displaying the oldest and most recent policies included in a given rating effective date.

- **Ownership Examples**

These examples are designed to assist the user in understanding the rules related to various combinability scenarios, as well as the manner in which recalculated mods apply after a change. Also included is an example that illustrates the type of rare circumstance that would result in the experience of an acquired entity not being transferred to the new owner.

- **Employee Leasing Examples**

Several examples are included to clarify the rating method when a client company enters or terminates an employee leasing arrangement under both master policy and multiple coordinated policy situations.

- **Separate State Modification Example**

This example displays the calculation method for those situations where a separate state modification is requested for an interstate-rated risk.

Having information such as this in the *User's Guide* provides the flexibility for subsequent updates and new examples to be included without the need to make a filing. This is part of our ongoing commitment to ensuring that the rules are easily understood by users of the Plan.

PROPOSAL

It is proposed that the new *Experience Rating Plan Manual* as contained in Exhibits 1 and 2 be adopted. It is also proposed that Exhibits 3 and 4 for the *Basic Manual* and *Statistical Plan*, respectively, be adopted. Here is a summary of each of the exhibits included in this filing package:

Exhibit 1 contains the *Experience Rating Plan Manual* national rules in the new format. It also includes the revised Appendix. The Appendix contains the new ERM-14 Ownership Form. This exhibit also includes the existing ERM-6 Non-Affiliate Data Reporting Form, and the NC2745 Form, used to report experience of former clients of employee leasing arrangements.

Exhibit 2 contains the state special rules for your state, if applicable.

Exhibit 3 provides for the transfer of the Schedule Rating rules, table and special forms to the *Basic Manual*. Many customers and some regulators have asked that this material be moved from the *Experience Rating Plan Manual* to the *Basic Manual* due to its larger distribution.

Exhibit 4 is a minor *Statistical Plan* rule change. We are proposing removal of rules from the *Experience Rating Plan Manual* that are redundant with the rules regarding reporting of payroll and losses already a part of the *Statistical Plan*. This *Statistical Plan* change removes a reference from that Plan that indicated the *Experience Rating Plan Manual* defined a noncompensable claim.

ITEM E-1379—2003 EXPERIENCE RATING PLAN MANUAL FOR WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

Exhibit 5 is the side-by-side comparison of the present and proposed national rules including explanatory comments. This exhibit is for your information only, and will help you the review the item filing, particularly in identifying the changes and documenting where material has been moved. No side-by-side comparison was developed for the state special rules because most of them are adaptations of, or exceptions to, the national rules.

Additionally, the paper and electronic versions of the new ***Experience Rating Plan Manual*** will contain references alerting the user to the availability of more information. The references, such as “Refer to ... ,” will periodically be updated or added. However, the references will not be filed for approval because they do not impact rules and simply refer the user to another section of the national or state special pages of either the ***Experience Rating Plan Manual*** or ***User’s Guide***.

IMPACT

There will be no premium impact as a result of the new ***Experience Rating Plan Manual***. We anticipate that the new manual, particularly in its electronic format, will enhance understanding of the rules and procedures related to this individual risk rating program. The focus has been on development of a product that fulfills the need for a filed and approved set of rules, while also presenting the material in a manner more suitable to electronic viewing and use by all customers.

IMPLEMENTATION

The attached exhibits include the proposed changes necessary to implement this item. We propose that:

- Exhibits 1 and 2 be implemented July 1, 2004 for all experience rating modifications effective on or after that date
- Exhibits 3 and 4 be effective July 1, 2004

User's Guide

**COMPANION TO
EXPERIENCE RATING PLAN MANUAL FOR WORKERS COMPENSATION
AND EMPLOYERS LIABILITY INSURANCE**

Copyright © 2002
National Council on Compensation Insurance, Inc.
All rights reserved.

This material is owned by NCCI and is protected by copyright law. Unauthorized use, sale, reproduction, distribution, preparation of derivative works, transfer or assignment of this material, or any part thereof, may be punishable to the fullest extent of the law.

This User's Guide is intended solely as a source of helpful information and examples for users of the Experience Rating Plan Manual. Unlike the Experience Rating Plan Manual, which contains rules approved by regulatory authorities in jurisdictions where it applies, the User's Guide does not contain rules and has not been filed with regulatory authorities.

NCCI makes no representation or warranty, express or implied, as to any matter whatsoever, including but not limited to the accuracy of any information, product or service furnished hereunder. The recipient of this material subscribes to and utilizes the information "as is" and is subject to any license agreement that governs the use of this information.

User's Guide Table of Contents

A. General Explanations	UG1
B. Experience Rating Elements and Formula	UG3
C. Elements of Experience Rating Formula and Worksheet	UG11
D. Experience Rating Formula	UG15
E. Experience to Be Used in a Rating	UG16
F. Example of Combination of Entities and Ownership Changes for Rule 3	UG20
G. Special Rating Conditions	UG23

USER'S GUIDE

The *User's Guide* is a companion to the *Experience Rating Plan Manual*. It contains examples and explanations of the Manual rules.

A. GENERAL EXPLANATIONS

1. Purpose of Experience Rating

The *Experience Rating Plan* (the Plan) is an integral part of the final cost of workers compensation and employers liability insurance. The purpose of experience rating is to individualize a risk's premium and to provide an incentive to maintain a safe workplace.

The Plan predicts whether a qualifying risk is likely to develop loss experience that is better or worse than that of the average risk in a particular classification. It does this by comparing the total experience of individual risks with the average risk in the same classification. The differences are reflected by an experience rating modification factor, which may result in an increase, a decrease, or no change in premium.

2. Dispute Resolution and Appeals Process

An employer who believes that the rules of the *Experience Rating Plan Manual* have not been properly applied can request our assistance in resolving their dispute. NCCI's dispute resolution assistance and, in many states, administration of an appeal process, provide an opportunity for employers and carriers to efficiently resolve conflicts. Refer to Rule 1-D-6 of the *Experience Rating Plan Manual*.

a. How Does Dispute Resolution Work?

- The first step is for the employer to work with its insurance carrier to resolve the dispute.
- If these efforts are unsuccessful, the employer should send a written request to NCCI's Customer Service Center, providing the details of all issues in dispute. Customer Service will research each area of concern and provide a written explanation regarding the correct application of the rule in dispute.
- If the employer disagrees with the explanation provided by Customer Service, it may request in writing that the issue be appropriately escalated. The issue will be reviewed in an effort to resolve the dispute. Many disputes are resolved at this stage without the need for further action.
- For disputes not resolved, the employer has the right to a formal appeal using the mechanism available in the state.

b. What Kinds of Appeal Mechanisms Are There?

Appeal mechanisms vary by state. Most states have an Appeals Board or a Classification and Rating Committee. The composition of each state's Board or Committee varies, but usually consists of business and insurance industry representatives. Other states use an NCCI internal review panel composed of knowledgeable and experienced NCCI employees. Several states do not have a formal mechanism; however, NCCI may still provide assistance in these states. Regardless of the mechanism within a state, NCCI subject matter experts are involved in reviewing all disputes.

c. What Type of Appeals Can Be Presented?

Most appeal mechanisms generally make decisions relating to:

- Experience rating modification factors
- Classification assignments
- Application of rules contained in NCCI manuals

d. How Is a Formal Appeal Requested?

The employer must submit its dispute in writing and fax or mail it to NCCI. Appropriate documentation must also be submitted, including documentation of attempts to resolve the dispute with the insurance carrier. We will review the documentation for completeness and may request additional information. NCCI will also obtain the insurance carrier's position on the issues in dispute before scheduling a hearing.

e. What Happens at the Hearing?

NCCI will notify the employer, producer (if applicable), and insurance carrier of the date, time and place of the hearing. Hearings are informal. Attorneys are not required because the purpose of the hearing is to present the facts about the business, not to argue legal or procedural points. The employer and the carrier must be prepared to make brief presentations to Board or Panel members. Board members will probably also ask questions to clarify issues. In most states, parties to the dispute are excused while the Board meets in executive session to discuss the appeal and reach a decision. A representative of the Board will send a written notice of decision to all parties within 30 days of the hearing.

6. What Happens If the Board Denies My Appeal?

If you disagree with the decision made by the Board, you have the right to appeal the decision to your state's Insurance Division. You generally have 30 days after the date of the Board's decision letter in which to file such an appeal. Information on how to appeal the Board's decision will be included in the Board's decision letter.

B. EXPERIENCE RATING ELEMENTS AND FORMULA

1. Premium Eligibility Examples for Rule 2-A-3

A risk is eligible for experience rating when its subject premium, developed in its experience period, meets or exceeds the minimum eligibility amount. Refer to Rule 2-A-3 of the *Experience Rating Plan Manual* for average annual subject premium rules.

a. Average Annual Subject Premium

The average annual subject premium is calculated as follows.

Example 1: A Risk With 32 Months of Experience

Policy	Months of Data	Subject Premium
2002	12	4,000
2001	12	4,000
2000	8	3,000
Total	32	11,000

$$\frac{\$11,000}{32} \times 12 = \$4,125 \text{ Average Annual Subject Premium}$$

Example 2: A Risk With 45 Months of Experience

Policy	Months of Data	Subject Premium
2002	12	4,000
2001	12	4,000
2000	12	3,000
1999	9	8,000
Total	45	19,000

$$\frac{\$19,000}{45} \times 12 = \$5,067 \text{ Average Annual Subject Premium}$$

b. Intrastate Risk Eligible for Experience Rating—Examples for Rule 2-A-4

An intrastate risk may be eligible for experience rating under the following conditions.

Assume state eligibility amounts are:

Column A	Column B
10,000	5,000

Example 1: Experience Period of 12 Months

Policy	Months of Data	Subject Premium
2002	12	12,000
Total	12	12,000

Although this risk has only 12 months of experience, the subject premium exceeds \$10,000. Therefore, it qualifies for experience rating.

Example 2: Experience Period of Less Than 24 Months

Policy	Months of Data	Subject Premium
2002	10	14,000
Total	10	14,000

Although this risk has only 10 months of experience, the subject premium exceeds \$10,000. Therefore, it qualifies for experience rating.

Example 3: Experience Period of Less Than 24 Months

Policy	Months of Data	Subject Premium
2002	12	6,000
2001	2	5,000
Total	14	11,000

This risk has 14 months of experience and exceeds \$10,000. Therefore, it qualifies for experience rating.

Example 4: Experience Period of 24 Months

Policy	Months of Data	Subject Premium
2002	12	6,000
2001	12	4,000
Total	24	10,000

This risk does not meet the subject premium requirement in its most recent 12 months, but does meet the subject premium of \$10,000 when the most recent 24 months are added together. Therefore, it qualifies for experience rating.

Example 5: Experience Period of More Than 24 Months—Average Annual Subject Premium

Policy	Months of Data	Subject Premium
2002	12	5,500
2001	12	4,000
2000	12	6,500
Total	36	16,000

$$\frac{\$16,000}{36} \times 12 = \$5,333 \text{ Average Annual Subject Premium}$$

Because this risk has 36 months of experience, but does not meet or exceed \$10,000 during its most recent 12 or 24 months, the average annual subject premium must be determined. This risk's average annual subject premium is \$5,333. Because it exceeds the average annual subject premium requirement of \$5,000, it qualifies for experience rating.

Example 6: Experience Period of More Than 24 months—Average Annual Subject Premium

Policy	Months of Data	Subject Premium
2002	12	6,000
2001	12	2,000
2000	12	5,000
1999	9	10,000
Total	45	23,000

$$\frac{\$23,000}{45} \times 12 = \$6,133 \text{ Average Annual Subject Premium}$$

Because this risk has 45 months of experience, but does not meet or exceed \$10,000 during its most recent 12 or 24 months, the average annual subject premium must be determined. This risk's average annual subject premium is \$6,133. Because it exceeds the average annual subject premium requirement of \$5,000, it qualifies for experience rating.

c. Intrastate Risk Not Eligible for Experience Rating—Examples for Rule 2-A-4

An intrastate risk is **not** eligible for experience rating under the following conditions.

Example 1: Experience Period of 12 Months

Policy	Months of Data	Subject Premium
2002	12	9,000
Total	12	9,000

This risk has only 12 months of experience, and the subject premium does not meet or exceed \$10,000. Therefore, it does not qualify for experience rating.

Example 2: Experience Period of Less Than 24 Months

Policy	Months of Data	Subject Premium
2002	10	9,500
Total	10	9,500

This risk has only 10 months of experience, and the subject premium does not meet or exceed \$10,000. Therefore, it does not qualify for experience rating. The \$9,500 subject premium is not projected to an annual average subject premium because the experience period is less than 24 months.

Example 3: Experience Period of 24 Months

Policy	Months of Data	Subject Premium
2002	12	3,000
2001	12	4,000
Total	24	7,000

This risk has \$7,000 in subject premium for 24 months of experience, and does not meet or exceed \$10,000 subject premium requirement. Therefore, it does not qualify for experience rating.

Example 4: Experience Period of More Than 24 Months—Average Annual Subject Premium

Policy	Months of Data	Subject Premium
2002	12	5,500
2001	12	4,000
2000	12	3,000
Total	36	12,500

$$\frac{\$12,500}{36} \times 12 = \$4,167 \text{ Average Annual Subject Premium}$$

Because this risk has 36 months of experience, but does not meet or exceed \$10,000 during its most recent 12 or 24 months, the average annual subject premium must be determined. This risk's average annual subject premium is \$4,167, which does not meet the \$5,000 average annual subject premium. Therefore, this risk does not qualify for experience rating.

Example 5: Experience Period of More Than 24 Months—Average Annual Subject Premium

Policy	Months of Data	Subject Premium
2002	12	1,000
2001	12	2,000
2000	12	5,000
1999	9	10,000
Total	45	18,000

$$\frac{\$18,000}{45} \times 12 = \$4,800 \text{ Average Annual Subject Premium}$$

Because this risk has 45 months of experience, but does not meet or exceed \$10,000 during its most recent 12 or 24 months, the average annual subject premium must be determined. This risk's average annual subject premium is \$4,800, which does not meet the \$5,000 average annual subject premium. Although it qualified in previous years, it no longer qualifies for experience rating.

d. Interstate Risk Eligible for Experience Rating—Examples for Rule 2-A-5

An interstate risk may be eligible for experience rating under the following conditions.

Assume state eligibility amounts are as follows:

State	Column A	Column B
X	10,000	5,000
Y	8,000	4,000
Z	7,000	3,750

Example 1: Experience Period of 12 Months

Policy	Months of Data	Subject Premium		
		State X	State Y	State Z
2002	12	11,000	6,000	6,000
Total	12	11,000	6,000	6,000

This risk has 12 months of experience in three states. Only State X meets the premium eligibility requirements because its subject premium of \$11,000 exceeds the \$10,000 requirement. Although States Y and Z do not qualify for experience rating on an intrastate basis, the entire risk qualifies because the eligibility for State X has been met.

Example 2: Experience Period of Less Than 24 Months

Policy	Months of Data	Subject Premium		
		State X	State Y	State Z
2002	10	9,000	9,500	10,500
Total	10	9,000	9,500	10,500

This risk has only 10 months of experience and needs only one state to meet or exceed its subject premium eligibility requirement. In this situation, states Y and Z exceed the subject premium eligibility requirement. This risk qualifies for experience rating.

Example 3: Experience Period of 24 Months

Policy	Months of Data	Subject Premium		
		State X	State Y	State Z
2002	12	5,500	6,000	1,000
2001	12	4,500	6,000	0
Total	24	10,000	12,000	1,000

This risk has 24 months of experience in three states. Both State X and State Y meet the premium eligibility requirements because their subject premium of \$10,000 and \$12,000, respectively, meets and exceeds the \$10,000 and \$8,000 requirements. Although State Z does not qualify for experience rating on an intrastate basis, the entire risk qualifies because the eligibility for at least one of the other states has been met.

Example 4: Experience Period of More Than 24 Months

Policy	Months of Data	Subject Premium		
		State X	State Y	State Z
2002	12	5,500	6,000	1,000
2001	12	4,500	4,000	0
2000	12	8,000	2,000	0
Total	36	18,000	12,000	1,000

Although this risk has more than 24 months of experience, it is not necessary to determine the average annual subject premium because both States X and Y meet or exceed the minimum premium requirements of \$10,000 and \$8,000 during the first 24 months. Only one state of an interstate risk must qualify for experience rating on an intrastate basis for the entire risk to be experience rated. Therefore, this risk qualifies for experience rating.

Example 5: Experience Period of More Than 24 Months—Average Annual Subject Premium

Policy	Months of Data	Subject Premium		
		State X	State Y	State Z
2002	12	5,000	6,000	1,000
2001	12	4,000	1,000	0
2000	12	5,500	3,000	0
1999	9	8,000	1,000	1,000
Total	45	22,500	11,000	2,000

$$\frac{\$22,500}{45} \times 12 = \$6,000 \text{ Average Annual Subject Premium}$$

Because this risk has 45 months of experience, but does not meet or exceed any of the individual state thresholds during its most recent 24 months, the average annual subject premium must be determined. This risk's highest average annual subject premium is \$6,000 for State X, which exceeds \$5,000 average annual subject premium. Therefore, because this risk has one state that meets the average annual subject premium requirement of \$5,000, it qualifies for experience rating.

e. Interstate Risk Not Eligible for Experience Rating—Examples for Rule 2-A-5

An interstate risk is **not** eligible for experience rating under the following conditions.

Example 1: Experience Period of 12 Months

Policy	Months of Data	Subject Premium		
		State X	State Y	State Z
2002	12	4,000	6,000	6,000
Total	12	4,000	6,000	6,000

This risk has only 12 months of experience, and the subject premium does not meet or exceed the premium threshold in any of the states. Therefore, it does not qualify for experience rating.

Example 2: Experience Period of Less Than 24 Months

Policy	Months of Data	Subject Premium		
		State X	State Y	State Z
2002	10	8,000	6,000	6,000
Total	10	8,000	6,000	6,000

This risk has only 10 months of experience, and the subject premium does not meet or exceed the premium threshold in any of the states. The subject premium is not projected to an annual average subject premium because the experience period is less than 24 months. Therefore, it does not qualify for experience rating.

Example 3: Experience Period of Less Than 24 Months

Policy	Months of Data	Subject Premium		
		State X	State Y	State Z
2002	12	3,000	2,000	1,000
2001	2	2,000	2,000	0
Total	14	5,000	4,000	1,000

This risk has only 14 months of experience, and the subject premium does not meet or exceed the premium threshold in any of the states. The subject premium is not projected to an annual average subject premium because the experience period is less than 24 months. Therefore, the risk does not qualify for experience rating.

Example 4: Experience Period of 24 Months

Policy	Months of Data	Subject Premium		
		State X	State Y	State Z
2002	12	3,000	2,000	1,000
2001	12	2,000	2,000	0
Total	24	5,000	4,000	1,000

This risk has 24 months of experience, and the subject premium does not meet or exceed the premium threshold in any of the states for the most recent 12 or 24 months. Therefore, it does not qualify for experience rating.

Example 5: Experience Period of More Than 24 Months—Average Annual Subject Premium

Policy	Months of Data	Subject Premium		
		State X	State Y	State Z
2002	12	3,500	3,000	1,000
2001	12	3,500	4,000	0
2000	12	2,000	4,500	0
Total	36	9,000	11,500	1,000

$$\frac{\$11,500}{36} \times 12 = \$3,833 \text{ Average Annual Subject Premium}$$

Because this risk has 36 months of experience, but does not meet or exceed any of the states' subject premium eligibility requirements during its most recent 24 months, the average annual subject premium must be determined. If any one of the three states meet or exceed its requirement, the entire risk would qualify for experience rating. This risk's average annual subject premium for State Y is \$3,833, which does not meet the \$4,000 requirement for State Y. States X and Z have less premium than State Y and also do not meet the requirements. This risk does not qualify for experience rating.

Example 6: Experience Period of More Than 24 Months—Average Annual Subject Premium

Policy	Months of Data	Subject Premium		
		State X	State Y	State Z
2002	12	5,000	4,000	1,000
2001	12	4,000	3,000	0
2000	12	4,000	2,000	0
1999	9	2,000	1,000	1,000
Total	45	15,000	10,000	2,000

$$\frac{\$15,000}{45} \times 12 = \$4,000 \text{ Average Annual Subject Premium}$$

Because this risk has 45 months of experience, but does not meet or exceed any states' premium threshold during its most recent 24 months, the average annual subject premium must be determined. This risk's highest average annual subject premium is \$4,000 for State X, which does not meet the \$5,000 average annual subject premium. Because none of the states meet or exceed its premium requirement, this risk does not qualify for experience rating.

2. Rating Date Examples for Rule 2-B-2

a. Single Policy

A single policy can be either an intrastate or interstate risk.

Rating Effective Date	Policy History
01/01/04	01/01/03–01/01/04
	01/01/02–01/01/03
	01/01/01–01/01/02
	01/01/00–01/01/01

This risk's history is a series of annual January 1 policies. As such, the rating effective date is January 1.

b. Multiple Policies

Multiple policies may be written for intrastate or interstate policies with all policies having the same effective date.

Rating Effective Date	Policy History	
	Entity A	Entity B
09/01/04	09/01/03–09/01/04	09/01/03–09/01/04
	09/01/02–09/01/03	09/01/02–09/01/03
	09/01/01–09/01/02	09/01/01–09/01/02
	09/01/00–09/01/01	09/01/00–09/01/01

A risk may choose to have multiple policies for its operations in different states or for separate entities. This risk's history is a series of annual September 1 policies. As such, the rating effective date is September 1.

C. ELEMENTS OF EXPERIENCE RATING FORMULA AND WORKSHEET

1. Loss Limitation for Single and Multiple Claims—Example for Rule 2-C-13-a

a. Medical-Only Loss Limitation

Medical-only losses, coded as Injury Type 6, are reduced by 70% when included in the experience rating modification calculation. The impact of medical-only losses has been significantly reduced by this limitation.

A loss of . . .	Would be used in the calculation as . . .
\$500	\$150
\$650	\$195
\$825	\$248

b. State Per Claim Accident Limitation

Per claim accident limits vary by state. They are intended to protect the employer from the adverse impact any single large claim could have on the experience rating modification calculation.

Assume a state's per claim accident limit is \$103,500. A claim of \$185,000 is reported at that amount and appears in full value on the experience rating modification worksheet. However, in the summary of all losses used in the calculation, the claim will be limited to \$103,500. This limitation applies for all claims that exceed \$103,500.

c. State Per Claim Accident Limitation

Assume in this example that the state per claim limit is \$97,500. Company A has three claims from three separate accidents:

Loss	Actual Incurred	Actual Incurred Limited	Actual Primary
1	\$175,000	\$97,500	\$5,000
2	\$12,000	\$12,000	\$5,000
3	\$5,000	\$5,000	\$5,000
Total	\$192,000	\$114,500	\$15,000

Because Loss 1 exceeds the \$97,500 limit, it is reduced to that amount. Both Losses 2 and 3 are used at full value. Each actual primary loss is \$5,000, totaling \$15,000.

2. Loss Limitations for Accidents Involving Two or More Persons—Examples for Rule 2-C-13-a

States also have a multiple claim accident limitation, which is double the per claim accident limitation. If the per claim limit is \$103,500, the multiple claim limitation would be \$207,000. The multiple claim limitation is another layer of protection that the Plan provides. It ensures that the impact of a catastrophic accident (one incident involving two or more claims) is lessened.

- a. In this example, assume a warehouse fire occurs, resulting in four injured workers with individual claim amounts of \$150,000, \$127,000, \$85,000 and \$60,000, totaling \$422,000.

These four claims would be reported in a manner identifying them as individual claims from the same accident. This ensures that the experience rating modification calculation will limit the \$422,000 in claims to \$207,000. In addition, the actual primary loss is limited to \$10,000 for the four claims, rather than the \$20,000 (\$5,000 each) that would normally apply for four claims of this size.

- b. Assume the state per claim limit is \$98,000; the state multiple claim limit is \$196,000.
c. Assume Company B has four claims resulting from a single accident:

Loss	Actual Incurred	Actual Incurred Limited	Actual Primary Limited
1	\$125,000	Multiple Claim Limit	Actual Primary Limit
2	\$121,000		
3	\$145,000		
4	\$50,000		
Total	\$441,000	\$196,000	\$10,000

The multiple claim limitation reduced the amount of the actual incurred losses used in the experience rating calculation by \$245,000 and the actual primary losses by \$10,000.

- d. As a comparison, if each loss were a result of four separate accidents, the losses would be limited individually and used in the calculation as follows:

Loss	Actual Incurred	Actual Incurred	Actual Primary
1	\$125,000	\$98,000	\$5,000
2	\$121,000	\$98,000	\$5,000
3	\$145,000	\$98,000	\$5,000
4	\$50,000	\$50,000	\$5,000
Total	\$441,000	\$344,000	\$20,000

The limitation of the three losses exceeding the single per claim amount of \$98,000 results in \$344,000 in actual incurred losses and \$20,000 in actual primary losses being used in the experience rating calculation.

3. Disease Loss Limitation—Examples for Rule 2-C-13-b

Assume that under the state act the per claim limit is \$100,000 and the multiple claim limit is \$200,000.

a. Single Loss Example

ABC Company has:

- A disease loss valued at \$175,000
- Total expected losses of \$50,000
- Total expected primary losses of \$20,000

- (1) As a first layer of protection, the actual incurred loss is limited to the state act per claim accident limitation of \$100,000. The actual primary loss is limited to \$5,000.
- (2) As a second layer of protection, the policy in which the disease loss incurred is also subject to further limitation.

The policy's total actual incurred disease losses are limited as follows:

- $(3 \times \text{State Act Per Claim Limit}) + 120\% \text{ of the risk's total expected losses} =$
- $(3 \times \$100,000) + (\$50,000 \times 120\%) =$
- $\$300,000 + \$60,000 = \$360,000$

The policy's total actual primary disease losses are limited as follows:

- $\$10,000 + 40\% \text{ of the risk's total expected primary losses} =$
- $\$10,000 + (\$20,000 \times 40\%) =$
- $\$10,000 + \$8,000 = \$18,000$

By the nature of the first layer of protection, ABC Company's disease loss of \$175,000 does not exceed the policy actual incurred loss disease limitation of \$360,000. Also, ABC Company's policy actual primary disease loss limitation of \$18,000 is not met because of the \$5,000 actual primary loss limitation under the first layer of protection. Therefore, the \$175,000 disease loss is limited as follows:

- \$100,000 actual incurred loss
- \$5,000 actual primary loss

b. Multiple Loss Example—State Act Limitation

XYZ Company has:

- A single policy with three disease losses resulting from the same accident
- Total expected losses of \$450,000
- Total expected primary losses of \$100,000

- (1) As a first layer of protection, the actual incurred losses are limited to the state act multiple claim accident limitation of \$200,000. The actual primary loss is limited to \$10,000.

Loss	Actual Incurred	Actual Incurred Limited	Actual Primary Limited
1	\$175,000	Multiple Claim Limit	Actual Primary Limit
2	\$25,000		
3	\$40,000		
Total	\$240,000	\$200,000	\$10,000

- (2) As a second layer of protection, the policy in which the disease losses incurred is also subject to further limitation.

The policy's total actual incurred disease losses are limited as follows:

- $(3 \times \text{State Act Per Claim Limit}) + 120\%$ of the risk's total expected losses =
- $(3 \times \$100,000) + (\$450,000 \times 120\%) =$
- $\$300,000 + \$540,000 = \$840,000$

The policy's total actual primary disease losses are limited as follows:

- $\$10,000 + 40\%$ of the risk's total expected primary losses =
- $\$10,000 + (\$100,000 \times 40\%) =$
- $\$10,000 + \$40,000 = \$50,000$

By the nature of the first layer of protection, ABC Company's disease losses of \$240,000 do not exceed the policy actual incurred loss disease limitation of \$840,000. Also, under ABC Company's policy, the actual primary disease loss limitation of \$50,000 is not met because of the \$10,000 actual primary loss limitation under the first layer of protection. Therefore, the \$240,000 disease losses are limited as follows:

- \$200,000 actual incurred loss
- \$10,000 actual primary loss

c. Multiple Loss Example—Losses Not Limited

In this example, XYZ Company has:

- A single policy with three disease losses resulting from the same accident
- Total expected losses of \$300,000
- Total expected primary losses of \$45,000

- (1) In this situation, the total of the three losses does not exceed the state act multiple claim accident limitation, but the first loss does exceed the state act single claim accident limitation. Therefore, as a first layer of protection, the largest loss is limited to \$100,000 while the remaining two losses are used in the calculation at full value. As a second layer of protection, the actual primary loss is limited to a total of \$10,000. Although the total of the three losses does not exceed the multiple claim limitation, the actual primary losses are not treated as individual losses at \$5,000 each. If they were each treated individually, the total actual primary loss would be \$15,000.

Loss	Actual Incurred	Actual Incurred Limited	Actual Primary Limited
1	\$175,000	\$100,000	
2	\$10,000	\$10,000	
3	\$5,000	\$5,000	
Total	\$190,000	\$115,000	\$10,000

(2) As an additional layer of protection, the policy in which the disease losses incurred is also subject to further limitation.

The policy's total actual incurred disease losses are limited as follows:

- $(3 \times \text{State Act Per Claim Limit}) + 120\% \text{ of the risk's total expected losses} =$
- $(3 \times \$100,000) + (\$300,000 \times 120\%) =$
- $\$300,000 + \$360,000 = \$660,000$

The policy's total actual primary disease losses are limited as follows:

- $\$10,000 + 40\% \text{ of the risk's total expected primary losses} =$
- $\$10,000 + (\$45,000 \times 40\%) =$
- $\$10,000 + \$18,000 = \$28,000$

XYZ Company's disease losses of \$190,000 do not exceed the policy actual incurred loss disease limitation of \$660,000. Also, XYZ Company's policy actual primary disease loss limitation of \$28,000 is not met because of the \$10,000 actual primary loss limitation under the first layer of protection. Therefore, the \$190,000 disease losses are limited as follows:

- \$115,000 actual incurred loss
- \$10,000 actual primary loss

D. EXPERIENCE RATING FORMULA

1. Experience Rating Calculation

When applying an experience rating modification to premium:

- 1.00 is a unity factor
- Lower than 1.00 is a credit
- Higher than 1.00 is a debit

2. Rounding of Experience Rating Modification Factor—Example for Rule 2-D-1

The final calculation of the experience rating modification calculation is rounded to two (2) decimal places. For example: 26,559 (Total A) / 22,814 (Total B) = 1.1641 = 1.16 Experience Rating Modification.

3. Maximum Debit Modification—Example for Rule 2-D-2

Experience rating modification factors are limited to a risk-specific maximum debit modification.

Consider ABC Company:

- Total Expected Losses = \$5,000
- Total Expected Primary Losses = \$1,200
- Total Expected Excess Losses = \$3,800
- Actual Losses = \$30,000
- Actual Primary Losses = \$25,000
- Actual Excess Losses = \$5,000
- Weighting Value = 0.05
- Ballast Value = 11250
- G Factor = 4.50

Using the figures above, ABC Company's experience rating modification is determined below:

Primary Losses		Stabilizing Value			Ratable Excess		Totals
\$25,000 Actual Primary Losses	+	(1 minus Weighting Value) x Expected Excess Losses (1 - 0.05) x \$3,800	+	11250 Ballast Value	+	Weighting Value x Actual Excess Losses 0.05 x \$5,000	= Total A 40110
\$1,200 Expected Primary Losses	+	(1 - 0.05) x \$3,800 (1 minus Weighting Value) x Expected Excess Losses	+	11250 Ballast Value	+	0.05 x \$3,800 Weighting Value x Expected Excess Losses	= Total B 16250

40,110 (Total A) / 16,250 (Total B) = 2.468 = 2.47 Calculated Experience Rating Modification (before maximum debit modification calculation)

To calculate ABC Company's maximum debit modification:

$$1 + \{(0.00005)[(\text{Total Expected Losses}) + (2)(\text{Total Expected Losses}) / (G)]\}$$

$$1 + \{(0.00005)[(5,000) + (2)(5,000) / (4.50)]\} =$$

$$1 + \{(0.00005)[(5,000) + (10,000) / (4.50)]\} =$$

$$1 + \{(0.00005)[(5,000) + (2,222.22)]\} =$$

$$1 + \{(0.00005)(7,222.22)\} =$$

$$1 + 0.36 = 1.36 \text{ maximum debit modification}$$

This risk's maximum debit modification is 1.36. The calculated experience rating modification is 2.47. Since it exceeds the maximum debit modification, the 1.36 factor applies.

E. EXPERIENCE TO BE USED IN A RATING

1. Experience Period

According to Rule 2-E-1, a risk's rating effective date determines its experience period. The experience period contains policies with effective dates ranging from 21 to 57 months before the rating effective date, not exceeding 45 months of data.

To determine the maximum 45-month time period included in the experience period, refer to the Experience Period Reference Table or apply the following procedure:

- (a) List the Experience Rating Modification Effective Date 1/1/04
- (b) Add 3 months to the date in (a) 4/1/04
- (c) Subtract 2 years from the date in (b) 4/1/02
- (d) Subtract 3 years from the date in (c) 4/1/99

The maximum experience period of a 1/1/04 experience rating modification includes policies with effective dates on or after 4/1/99, through policies with effective dates on or before 4/1/02.

2. Examples for Rule 2-E-1

The examples below clarify the experience period used in a rating that has policy periods with varying lengths.

Example 1:

Assume a 1/1/04 rating effective date.

Policy Period	Months of Data
06/01/99–01/01/00	7
01/01/00–01/01/01	12
01/01/01–01/01/02	12
01/01/02–01/01/03	12

The 1/1/04 rating includes 43 months of data. This is within the 45-month period under this rule. The oldest policy period (6/1/99–1/1/00) is not more than 57 months before the rating effective date.

Example 2:

Assume a 7/1/04 rating effective date.

Policy Date	Months of Data
10/01/99–07/01/00	9
07/01/00–07/01/01	12
07/01/01–10/15/01	3.5
10/15/01–07/01/02	8.5-month coverage gap— no data to be included
07/01/02–07/1/03	12

The 7/1/04 rating includes 36.5 months of data, excluding the 8.5-month gap in coverage. This is within the 45-month period as provided under this rule. The oldest policy period (10/1/99–7/1/00) is not more than 57 months before the rating effective date.

Example 3:

Assume a 7/1/04 rating effective date.

Policy Date	Months of Data
02/01/00–12/01/00	10
12/01/00–07/01/01	7-month coverage gap— no data to be included
07/01/01–07/01/02	12
07/01/02–07/01/03	12

The 7/1/04 rating includes 34 months of data, excluding the 7-month gap in coverage. This is within the 45-month period as provided under this rule. The oldest policy period (2/1/00–12/1/00) is only 53 months before the rating effective date, and does not exceed the 57-month limit.

Example 4:

Assume a 7/1/04 rating effective date.

Policy Date	Months of Data
07/01/00–07/01/01	12
07/01/01–07/01/02	12
07/01/02–10/01/02	3-month coverage gap— no data to be included
10/01/02–07/01/03	9

The 7/1/04 rating includes 33 months of data within an experience period of 36 months. The data effective 10/1/02 is used.

Example 5:

Assume a 7/1/04 rating effective date.

Policy Date	Months of Data
07/01/00–07/01/01	12
07/01/01–07/01/02	12
07/01/02–07/01/03	12
10/01/02–10/01/03	12—newly acquired subsidiary with a different policy date

In this example, the 7/1/02–7/1/03 policy overlaps with the 10/1/02–10/1/03 subsidiary policy. The 7/1/04 rating includes 36 months of data for the principal entity and 12 months of data for the subsidiary entity. Because two policies overlap for nine months, the 39-month experience period is within the 45-month limit.

Example 6:

Assume a 7/1/04 rating effective date.

Policy Date	Months of Data
12/01/99–07/01/00	7
07/01/00–07/01/01	12
07/01/01–07/01/02	12
07/01/02–09/01/02	2
09/01/02–07/01/03	10

The experience period includes the 12/1/99 policy and the 9/1/02 policy. In this example, the 7/1/04 rating includes 43 months of data.

Example 7:

Assume a 7/1/04 rating effective date.

Policy Date	Months of Data
11/01/00–11/01/01	12
11/01/01–09/01/01	10
09/01/01–07/01/02	10-month coverage gap— no data to be included
07/01/02–10/01/02	3
10/01/02–07/01/03	9

The 7/1/04 rating includes 34 months of data, excluding the 10-month gap in coverage. This is within the 45-month period. The most recent policy period (10/1/02–7/1/03) is not less than 21 months before the rating effective date.

Example 8:

Assume a 9/1/04 rating effective date.

Policy Date	Months of Data
11/01/99–11/01/00	12
11/01/00–11/01/01	12
11/01/01–09/01/02	10
09/01/02–09/01/03	12

In this example, there is a total of 46 months of data. Since this exceeds the 45-month period and the oldest data is more than 57 months before the rating effective date, the 11/1/99–11/1/00 policy is not used. As a result, the experience period is 34 months.

Example 9:

Assume a 1/1/04 rating effective date with combinable entities A and B.

Entity A		Entity B	
Policy Date	Months of Data	Policy Date	Months of Data
01/01/00–01/01/01	12	03/01/00-03/01/01	12
01/01/01–01/01/02	12	03/01/01-03/01/02	12
01/01/02–01/01/03	12	03/01/02-03/01/03	12
Total	36	Total	36

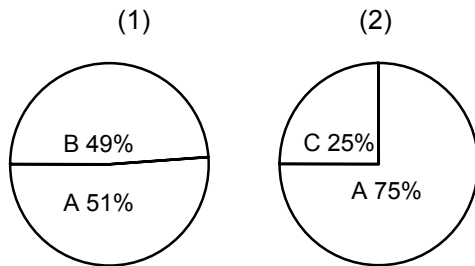
The experience period for a 1/1/04 rating effective date can include policies with effective dates on or between 4/1/99 and 4/1/02. Entity A and Entity B each have 36 months of experience. This particular risk's experience period begins 1/1/00 and ends 3/1/03, totaling 39 months of experience, even though 33 of the 39 months are overlapping. Each entity's separate experience, as well as the total experience of the risk, fits within the 45-month maximum experience period.

Experience Period Reference Table

Rating Effective Date	Oldest Policy Effective Date	Most Recent Policy Effective Date	Rating Effective Date	Oldest Policy Effective Date	Most Recent Policy Effective Date
01/01/2002	04/01/97	04/01/00	01/01/2003	04/01/98	04/01/01
02/01/2002	05/01/97	05/01/00	02/01/2003	05/01/98	05/01/01
03/01/2002	06/01/97	06/01/00	03/01/2003	06/01/98	06/01/01
04/01/2002	07/01/97	07/01/00	04/01/2003	07/01/98	07/01/01
05/01/2002	08/01/97	08/01/00	05/01/2003	08/01/98	08/01/01
06/01/2002	09/01/97	09/01/00	06/01/2003	09/01/98	09/01/01
07/01/2002	10/01/97	10/01/00	07/01/2003	10/01/98	10/01/01
08/01/2002	11/01/97	11/01/00	08/01/2003	11/01/98	11/01/01
09/01/2002	12/01/97	12/01/00	09/01/2003	12/01/98	12/01/01
10/01/2002	01/01/98	01/01/01	10/01/2003	01/01/99	01/01/02
11/01/2002	02/01/98	02/01/01	11/01/2003	02/01/99	02/01/02
12/01/2002	03/01/98	03/01/01	12/01/2003	03/01/99	03/01/02
01/01/2004	04/01/99	04/01/02	01/01/2005	04/01/00	04/01/03
02/01/2004	05/01/99	05/01/02	02/01/2005	05/01/00	05/01/03
03/01/2004	06/01/99	06/01/02	03/01/2005	06/01/00	06/01/03
04/01/2004	07/01/99	07/01/02	04/01/2005	07/01/00	07/01/03
05/01/2004	08/01/99	08/01/02	05/01/2005	08/01/00	08/01/03
06/01/2004	09/01/99	09/01/02	06/01/2005	09/01/00	09/01/03
07/01/2004	10/01/99	10/01/02	07/01/2005	10/01/00	10/01/03
08/01/2004	11/01/99	11/01/02	08/01/2005	11/01/00	11/01/03
09/01/2004	12/01/99	12/01/02	09/01/2005	12/01/00	12/01/03
10/01/2004	01/01/00	01/01/03	10/01/2005	01/01/01	01/01/04
11/01/2004	02/01/00	02/01/03	11/01/2005	02/01/01	02/01/04
12/01/2004	03/01/00	03/01/03	12/01/2005	03/01/01	03/01/04
01/01/2006	04/01/01	04/01/04	01/01/2007	04/01/02	04/01/05
02/01/2006	05/01/01	05/01/04	02/01/2007	05/01/02	05/01/05
03/01/2006	06/01/01	06/01/04	03/01/2007	06/01/02	06/01/05
04/01/2006	07/01/01	07/01/04	04/01/2007	07/01/02	07/01/05
05/01/2006	08/01/01	08/01/04	05/01/2007	08/01/02	08/01/05
06/01/2006	09/01/01	09/01/04	06/01/2007	09/01/02	09/01/05
07/01/2006	10/01/01	10/01/04	07/01/2007	10/01/02	10/01/05
08/01/2006	11/01/01	11/01/04	08/01/2007	11/01/02	11/01/05
09/01/2006	12/01/01	12/01/04	09/01/2007	12/01/02	12/01/05
10/01/2006	01/01/02	01/01/05	10/01/2007	01/01/03	01/01/06
11/01/2006	02/01/02	02/01/05	11/01/2007	02/01/03	02/01/06
12/01/2006	03/01/02	03/01/05	12/01/2007	03/01/03	03/01/06

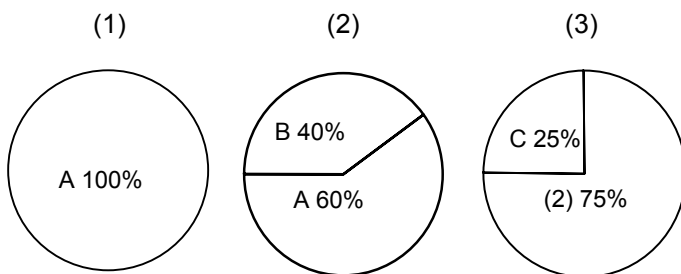
F. EXAMPLES OF COMBINATION OF ENTITIES AND OWNERSHIP CHANGES FOR RULE 3

Example 1:



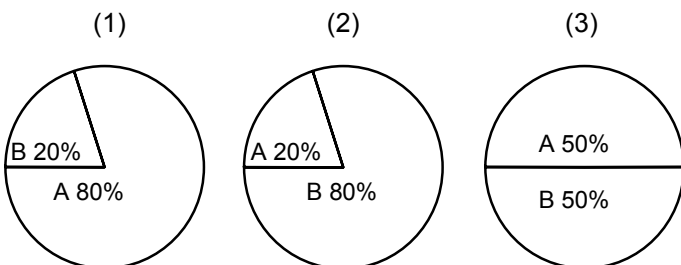
Entities (1) and (2) are combinable since A owns a majority in both.

Example 2:



Since A owns a majority of (1) and (2), and (2) owns a majority of (3), all entities are combinable.

Example 3:



Entities (1), (2), and (3) are all combinable since, as a group, A and B own more than 50% of each.

Example 4:

Six entities are combinable based on common majority ownership. A new entity becomes combinable with one or more, but not all entities in the existing combination. Since none of the original six entities had undergone a change in ownership, they would continue to be rated together. The new entity is rated separately.

Example 5:

Six entities, based on their respective ownership, are split into two sets of three combinable entities each. A new entity's ownership structure is such that it could be combinable with either of the existing three entity combinations. In this situation, the combination that produces the largest amount of premium would be made.

Example 6:

In this example, based on the ownership interest of six entities, two different sets of three entity combinations are possible. For example, the combinations could involve entities 1, 2, 3 and 4, 5, 6, or entities 1, 3, 5 and 2, 4, 6. The Plan rules provide that the combination involving the most entities be made. In this case, based on the ownership structure, a four-entity combination is not possible. As such, the combination that produces the largest amount of premium would be made.

Example 7:

On 3/1/04, Entity A, with a 1/1/04 mod of 1.26, purchases Entity B with a 10/1/03 modification of 0.86. Assuming the change is reported on a timely basis, the 1/1/04 mod of Entity A is revised as of 3/1/04 and applies from that date until the expiration date of the 1/1/04 rating. In this example, the inclusion of Entity B's experience results in a mod of 1.14, a decrease from the 1.26 original mod. Entity B's original 0.86 modification applies from 10/1/03 until its acquisition on 3/1/04.

Example 8:

Entities C and D have been combined for many years based on the following ownership:

- Entity C—John Doe 50%, Jane Doe 30%, John Smith 20%
- Entity D—John Doe 30%, Jane Doe 10%, John Smith 60%

As a group, the three individuals own 100% of both entities. The rating for the combined entities is effective 1/1/04. On 5/15/04, John Smith sells his 20% interest in Entity C to Sam Jones. The ownership of the two entities now appears as follows:

- Entity C—John Doe 50%, Jane Doe 30%, Sam Jones 20%
- Entity D—John Doe 30%, Jane Doe 10%, John Smith 60%

As a result, the entities are no longer combinable. Assuming the change is reported on a timely basis, Entities C and D are separately rated as of 5/15/04.

If the entities are written on separate policies, separate experience rating modifications will be produced for each entity effective the date of the change.

If the entities are written on a single policy, an attempt is made by the carrier(s) to separate the data by entity. If this can be done, each entity will receive a separate experience rating modification effective the date of the change. If the data cannot be separated by entity, Entity C will receive a unity factor (1.00). Entity D will continue to be experience rated based on all experience developed prior to the sale.

Example 9:

In this example, two separate, nonrated entities, Y and Z, are purchased by John Doe on 5/1/04. A policy is obtained to cover the operations of the newly combined entities. In determining the experience rating modifications for the 5/1/04 policy, the combined premium history is used to determine premium eligibility. Entity Y has developed policy premiums of \$2,000, \$2,300, and \$3,000 in the most recent 36 months in a state that requires an annual average subject premium of \$5,000, or \$10,000 during the most recent 12 to 24 months.

Entity Z has developed policy premiums of \$3,200, \$3,800, and \$4,700 in the most recent 36 months.

The risk will qualify for a 5/1/04 modification based on the combined premiums of \$5,200, \$6,100, and \$7,700 over the 36 months in the experience period.

Example 10—Exclusion:

The rules regarding transfer of experience provide that, in virtually all circumstances, the experience of an entity must be used in future ratings after an ownership change. Only in a rare circumstance, as provided under Rule 3-E, is past experience not used. Following is an example of such an unusual circumstance.

A city redevelopment project is aimed at revitalizing its seaport area, which existed for many years as a center for shipping and warehouse operations. An individual purchases a warehouse and immediately begins construction to turn the warehouse into a restaurant. The new risk is classified under Code 9082—Restaurant NOC, rather than Code 8292—Storage Warehouse NOC, which previously applied to the warehouse employees.

Because the restaurant operations and employees' duties differ dramatically from those of the warehouse, the process and hazard conditions have changed. It would not be appropriate to transfer the past experience of the warehouse operations to the new restaurant operations. The new owner never operated a warehouse and essentially purchased the building for its location.

In this example, all three exclusion conditions have been met:

- A material change in ownership occurred because the business was purchased outright
- The conditions relating to the governing classification change were met
- Process and hazard conditions were met

G. SPECIAL RATING CONDITIONS

1. Employee Leasing—Examples for Rule 5-A

a. Scenario 1

Client enters into an employee leasing arrangement in 2003, terminates the arrangement in 2006, and purchases its own workers compensation insurance coverage.

Example 1—Master Policy Client A:

Carrier does not file the NC2745 Form. Client A is not eligible for experience rating based on its own experience after termination of the employee leasing arrangement.

- In Example 1, the labor contractor's mod applies for three years after termination of the employee leasing arrangement because the carrier did not submit the NC2745 Form separating the client's experience from the master policies. After three years, the labor contractor's mod no longer applies.

Year	Client A	Mod Application
2003 2004 2005	Employee Leasing Arrangement (master policy). No direct employees.	Labor Contractor's Mod
2006	Terminates Employee Leasing Arrangement. Purchases own coverage. Carrier does not file the NC2745 Form separating client's experience.	Labor Contractor's Mod
2007 2008	Has own coverage.	Labor Contractor's Mod
2009	Has own coverage.	No mod is applied.

Example 2—Master Policy Client B:

Carrier does not file the NC2745 Form. Client B is eligible for experience rating based on its own experience after termination of employee leasing arrangement.

- In Example 2, the labor contractor's mod applies for two years after termination of the employee leasing arrangement because the carrier did not submit the NC2745 Form separating the client's experience from the master policies. The first mod calculated for Client B would be in 2009 using the experience from the 2006 and 2007 policies.

Year	Client B	Mod Application
2003 2004 2005	Employee Leasing Arrangement (master policy). No direct employees.	Labor Contractor's Mod
2006	Terminates Employee Leasing Arrangement. Purchases own coverage. Carrier does not file the NC2745 Form separating client's experience.	Labor Contractor's Mod
2007 2008	Has own coverage.	Labor Contractor's Mod
2009	Has own coverage.	Client B Mod using 2006 and 2007 experience.

Example 3—Master Policy Client C:

Carrier files the NC2745 Form for each year. Client C is not eligible for experience rating based on its own experience during employee leasing arrangement.

- In Example 3, a mod is not applied after termination of the employee leasing arrangement because the carrier submitted the NC2745 Form and the client was not eligible for experience rating based on the experience reported on the form.

Year	Client C	Mod Application
2003 2004 2005	Employee Leasing Arrangement (master policy). No direct employees.	Labor Contractor's Mod
2006	Terminates Employee Leasing Arrangement. Purchases own coverage. Carrier files the NC2745 Form separating client's experience.	No mod is applied.
2007 2008 2009	Has own coverage.	No mod is applied.

Example 4—Master Policy Client D:

Carrier files the NC2745 Form for each year. Client D is eligible for experience rating based on its own experience during the employee leasing arrangement.

- In Example 4, the client's mod is applied after termination of the employee leasing arrangement because the carrier submitted the NC2745 Form and the client was eligible for experience rating based on the experience reported on the form.

Year	Client D	Mod Application
2003 2004 2005	Employee Leasing Arrangement (master policy). No direct employees.	Labor Contractor's Mod
2006	Terminates Employee Leasing Arrangement. Purchases own coverage. Carrier files the NC2745 Form separating client's experience.	Client D Mod using 2003 and 2004 experience.
2007	Has own coverage.	Client D Mod using 2003, 2004, 2005 experience.
2008	Has own coverage.	Client D Mod using 2004, 2005, 2006 experience.
2009	Has own coverage.	Client D Mod using 2005, 2006, 2007 experience.

b. Scenario 2

Client enters into an employee leasing arrangement in 2003, terminates the arrangement in 2005, and purchases its own workers compensation insurance coverage. Prior to the employee leasing arrangement, the client had its own coverage.

Example 1—Master Policy Client E:

Carrier does not file the NC2745 Form. Client E is eligible for experience rating based on its own experience after termination of employee leasing arrangement.

- In this example, the client's mod is applied to the 2005 policy because the client developed experience during the experience period prior to entering the employee leasing arrangement. Since the carrier did not file the NC2745 Form for the policies effective 2003 and 2004, there is only one year of experience available during the experience period for the ratings effective 2006 and 2007. Since two years of experience are required for a risk with a three-year experience period, the labor contractor's mod will apply to the 2006 and 2007 policies. The next mod calculated for the client would be in 2008 utilizing the client's experience in 2005 and 2006.

Year	Client E	Mod Application
2000 2001 2002	Has own coverage and experience rating.	Client E Mod
2003 2004	Employee Leasing Arrangement (master policy). No direct employees.	Labor Contractor's Mod
2005	Terminates Employee Leasing Arrangement. Purchases own coverage. Carrier does not file the NC2745 Form separating client's experience.	Client E Mod using 2001 and 2002 experience.
2006 2007	Has own coverage.	Labor Contractor's Mod
2008	Has own coverage.	Client E Mod using 2005 and 2006 experience.
2009	Has own coverage.	Client E Mod using 2006, 2007, 2008 experience.

Example 2—Master Policy Client F:

Carrier does not file the NC2745 Form. Client F is not eligible for experience rating based on its own experience after termination of employee leasing arrangement.

- In this example, the labor contractor's mod applies because the carrier did not file the NC2745 Form and the client did not develop enough experience after the termination of the employee leasing arrangement to be experience rated on its own. The labor contractor's mod applies for three years after the termination of the employee leasing arrangement.

Year	Client F	Mod Application
2000 2001 2002	Has own coverage and not experience rated.	No mod is applied.
2003 2004	Employee Leasing Arrangement (master policy). No direct employees.	Labor Contractor's Mod
2005	Terminates Employee Leasing Arrangement. Purchases own coverage. Carrier does not file the NC2745 Form separating client's experience.	Labor Contractor's Mod
2006 2007	Has own coverage.	Labor Contractor's Mod
2008 2009	Has own coverage.	No mod is applied.

Example 3—Multiple Coordinated Policies (MCP):

Carrier does not need to file the NC2745 Form because the client's experience is reported separately under the multiple coordinated policy basis.

- In this example, Client G was experience rated before, during, and after the employee leasing arrangement. The client's mod applies to all policies because the employee leasing arrangement was covered under a multiple coordinated policy basis.

Year	Client G	Mod Application
2000 2001 2002	Has own coverage and experience rating.	Client F Mod
2003 2004	Employee Leasing Arrangement (multiple coordinated policies). No direct employees.	Client F Mod
2005	Terminates Employee Leasing Arrangement. Purchases own coverage.	Client F Mod using 2001, 2002, 2003 experience.
2006	Has own coverage.	Client F Mod using 2002, 2003, 2004 experience.
2007	Has own coverage.	Client F Mod using 2003, 2004, 2005 experience.
2008	Has own coverage.	Client F Mod using 2004, 2005, 2006 experience.

Example 4—Multiple Coordinated Policies (MCP):

Carrier does not need to file the NC2745 Form because the client's experience is reported separately under a multiple coordinated policies basis.

- In this example, Client H was not eligible to be experience rated before, during or after the employee leasing arrangement. A mod is not applicable to any of the policies.

Year	Client H	Mod Application
2000 2001 2002	Has own coverage and not experience rated.	No mod is applied.
2003 2004	Employee Leasing Arrangement (multiple coordinated policies). No direct employees.	No mod is applied.
2005	Terminates Employee Leasing Arrangement. Purchases own coverage.	No mod is applied.
2006 2007 2008 2009	Has own coverage.	No mod is applied.

2. Separate State Experience Rating Modification—Example for Rule 5-C

Example of a separate state experience rating modification calculation:

An insured operates in three states. Its operation in State A is insured through a competitive state fund that writes workers compensation insurance coverage solely in that state. Its operations in State B and State C are insured through another insurance carrier. The insured has a 1.22 interstate experience rating modification with an anniversary rating date of 4/1/03. The insured is eligible, based on premium size, for an intrastate modification in all states in which it operates.

Prior to the anniversary rating date of 4/1/03, the competitive state fund submits a written request signed by the insured to the rating organization requesting a separate state experience rating modification for State A.

- The separate state experience rating modification for State A will be 0.79
- The interstate experience rating modification for State B and State C will be 1.34

These modifications were calculated as follows:

State	Expected Losses
State A	\$5,327
State B and C	\$19,834
Total for All States	\$25,161

Steps	Factors
1. Calculate, on an interstate basis, a modification for the entire risk.	1.22
2. Calculate, on an intrastate basis, a modification for the state for which a separate modification has been requested.	0.80
3. Calculate, on an interstate basis, a modification for all states excluding the state for which a separate modification has been requested.	1.35
4. Calculate the following (using the results 1., 2., and 3. above): $\frac{(1.22)(25,161)}{(.80 \times 5,327) + (1.35 \times 19,834)}$	0.99
5. Calculate the final separate state experience rating modification by multiplying the result in 2. by the result in 4. (.80 X .99).	0.79
6. Calculate the final experience rating modification for all other states by multiplying the result in 3. by the result in 4. (1.35 X .99).	1.34

CURRENT

PART ONE

DESCRIPTION OF THE PLAN

I. INTRODUCTION

The rules in this manual apply to Experience Rating for Workers Compensation and Employers Liability Insurance. Refer to the state special experience rating plan rules for exceptions to the Plan's rules.

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.

PROPOSED

RULES

This manual contains rules that have been approved by state insurance regulators. These rules cover the following topics:

- Rule 1—General Explanations
- Rule 2—Experience Rating Elements and Formula
- Rule 3—Ownership Changes and Combination of Entities
- Rule 4—Application and Revision of Experience Rating Modifications
- Rule 5—Special Rating Conditions
- Appendix
- State Rating Values and Special Rules

RULE 1—GENERAL EXPLANATIONS

D. ADMINISTRATION

1. The rating organization determines the applicability of all Plan rules.

RULE 1—GENERAL EXPLANATIONS

B. MANDATORY PLAN

1. The *Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance* (the Plan) applies on a mandatory basis for risks that meet the premium eligibility requirements in Rule 2-A. Refer to the state rules for exceptions to this Plan's national rules.

A policy cannot be cancelled, rewritten or extended for purposes of enabling a risk to qualify for, or avoid application of, this Plan.

2. Any action taken in any form to evade the application of an experience rating modification determined in accordance with this Plan is prohibited.

USER'S GUIDE

A. GENERAL EXPLANATIONS

2. Dispute Resolution and Appeals Process

An employer who believes that the rules of the *Experience Rating Plan Manual* have not been properly applied can request our assistance in resolving their dispute. NCCI's dispute resolution assistance and, in many states, administration of an appeal process, provide an opportunity for employers and carriers to efficiently resolve conflicts. *Refer to Rule 1-D-6.*

a. How Does Dispute Resolution Work?

The first step is for the employer to work with its insurance carrier to resolve the dispute.

If these efforts are unsuccessful, the employer should send a written request to NCCI's Customer Service Center, providing the details of all issues in dispute. Customer Service will research each area of concern and provide a written explanation regarding the correct application of the rule in dispute.

If the employer disagrees with the explanation provided by Customer Service, it may request in writing that the issue be appropriately escalated. The issue will be reviewed in an effort to resolve the dispute. Many disputes are resolved at this stage without the need for further action.

CURRENT

PROPOSED

For disputes not resolved, the employer has the right to a formal appeal using the mechanism available in the state.

b. What Kinds of Appeal Mechanisms Are There?

Appeal mechanisms vary by state. Most states have an Appeals Board or a Classification and Rating Committee. The composition of each state's Board or Committee varies, but usually consists of business and insurance industry representatives. Other states use an NCCI internal review panel composed of knowledgeable and experienced NCCI employees. Several states do not have a formal mechanism; however, NCCI may still provide assistance in these states. Regardless of the mechanism within a state, NCCI subject matter experts are involved in reviewing all disputes.

c. What Type of Appeals Can Be Presented?

Most appeal mechanisms generally make decisions relating to:

- Experience modification factors
- Classification assignments
- Application of rules contained in NCCI manuals

d. How Is a Formal Appeal Requested?

The employer must submit its dispute in writing and fax or mail it to NCCI. Appropriate documentation must also be submitted, including documentation of attempts to resolve the dispute with the insurance carrier. We will review the documentation for completeness and may request additional information. NCCI will also obtain the insurance carrier's position on the issues in dispute before scheduling a hearing.

e. What Happens at the Hearing?

NCCI will notify the employer, producer (if applicable), and insurance carrier of the date, time and place of the hearing. Hearings are informal. Attorneys are not required because the purpose of the hearing is to present the facts about the business, not to argue legal or procedural points. The employer and the carrier must be prepared to make brief presentations to Board or Panel members. Board members will probably also ask questions to clarify issues. In most states, parties to the dispute are excused while the Board meets in executive session to discuss the appeal and reach a decision. A representative of the Board will send a written notice of decision to all parties within 30 days of the hearing.

CURRENT

2. OBJECT OF PLAN

The experience rating plan recognizes the differences between individual insureds. It does this by comparing the experience of individual insureds with the average insured in the same classification. The differences are reflected by an experience modification, based on individual loss records, which may increase or decrease premium.

PROPOSED

RULE 1—GENERAL EXPLANATIONS

A. EXPERIENCE RATING

Experience rating recognizes the differences among individual insureds with respect to safety and loss prevention. It does this by comparing the experience of individual insureds with the average insured in the same classification. The differences are reflected by an experience rating modification, based on individual payroll and loss records, which may result in an increase, decrease, or no change in premium.

*Refer to the **User's Guide for Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance** for more information.*

USER'S GUIDE

A. GENERAL EXPLANATIONS

1. Purpose of Experience Rating

The **Experience Rating Plan** (the Plan) is an integral part of the final cost of workers compensation and employers liability insurance. The purpose of experience rating is to individualize a risk's premium and to provide an incentive to maintain a safe workplace.

The Plan predicts whether a qualifying risk is likely to develop loss experience that is better or worse than that of the average risk in a particular classification. It modifies manual premium by a factor that is designed to more equitably price qualified risks. The Plan uses the risk's past experience to project future losses. This comparison of losses results in a premium reduction (credit) or a premium increase (debit).

The object of the Plan is to recognize the differences in loss experience among individual insureds. It does this by comparing the total experience of individual insureds with the average insured in the same classification. The differences are reflected by an experience rating modification factor, which may result in an increase, a decrease, or no change in premium.

CURRENT

3. POLICY PERIOD

a. POLICY FOR ONE YEAR

The rules of this Plan are based on policy periods not longer than one year. A policy issued for a period not longer than one year and 16 days is treated as a one-year policy.

b. POLICY LONGER THAN ONE YEAR

A policy issued for a period longer than one year and 16 days is treated as follows:

- (1) The policy period is divided into consecutive 12-month units.
- (2) If the policy period is not a multiple of 12 months, the Policy Period Endorsement specifies the first or last unit of less than 12 months as a short-term policy.
- (3) All manual rules and procedures apply to each such unit as if a separate policy had been issued for each unit.

4. EFFECTIVE DATE OF RULES AND RATING VALUES

Any change in rules and rating values will be shown on a reprinted page and designated by shading. Unless specified otherwise, each change applies only from the anniversary rating date, which occurs on or after the effective date of the change.

5. AUTHORITY TO VERIFY POLICY DATA

The Standard Workers Compensation and Employers Liability Insurance Policy provides the rating organization with the authority to examine and audit all records that relate to the policy.

6. ISSUANCE OF MODIFICATION

The experience modification for experience rated risks shall be calculated and issued by the appropriate rating organization listed in the Appendix.

PROPOSED

RULE 1—GENERAL EXPLANATIONS

B. MANDATORY PLAN

- 5. The rules of this Plan are based on policy periods not longer than one year.
 - a. A policy issued for a period not longer than one year and 16 days is treated as a one-year policy.
 - b. A policy issued for a period longer than one year and 16 days is treated as follows:
 - The policy period is divided into consecutive 12-month units.
 - The Policy Period Endorsement (WC 00 04 05) specifies the first or last unit of less than 12 months as a short-term policy.
 - All manual rules and procedures apply to each such unit as if a separate policy had been issued for each unit.

3. The effective date of a change in any rule or rating value is 12:01 a.m. on the date approved for use. Unless otherwise specified, each change applies only from the anniversary rating date, which occurs on or after the effective date of the change. Refer to Rule 2-B for more information about anniversary rating dates and rating effective dates.

4. The Standard Workers Compensation and Employers Liability Insurance Policy (WC 00 00 00 A) provides the rating organization with the authority to examine and audit all records that relate to the policy. The application of this Plan's rules may be affected by the inclusion of mandatory and/or advisory endorsements found in the **Forms Manual for Workers Compensation and Employers Liability Insurance**.

RULE 1—GENERAL EXPLANATIONS

D. ADMINISTRATION

- 2. The experience rating modification is calculated, issued and, if necessary, revised by the appropriate rating organization listed in the Preface.

CURRENT

PROPOSED

II. DEFINITIONS

A. ENTITY

Entity shall mean an individual, partnership, corporation, unincorporated association, fiduciary, or other legal entity. Examples of fiduciary may include trustee, receiver, executor or administrator.

B. RISK

Risk shall mean all entities eligible for combination under this Plan, regardless whether insurance is provided by one or more policies or insurance carriers. A risk may be:

1. A single entity, or
2. Two or more entities which qualify for combination under the rules of Part Three of this Plan.

C. RATE

Rate means either:

1. The manual rate or any other rate that has been established by the National Council or other licensed rating organization, or
2. The rate used by the carrier in accordance with applicable state regulatory requirements.

D. EXPERIENCE

Experience is the payroll and losses developed by a risk during a policy period.

RULE 1—GENERAL EXPLANATIONS

C. DEFINITIONS

4. Entity

An entity is an individual, partnership, corporation, unincorporated association, fiduciary, or other legal entity.

5. Risk

A risk is all entities eligible for combination under this Plan, regardless of whether insurance is provided by one or more policies or insurance carriers. A risk may be:

- a. A single entity, or
- b. Two or more entities that qualify for combination according to Rule 3-D.

COMMENT: A definition for “rate” was not included in the proposed rules because “rate” is not used in this Plan, and is defined in the *Basic Manual*.

1. Experience

The experience used to calculate a risk’s modification is comprised of the payroll and losses that are reported according to the *Statistical Plan*. For purposes of this Plan, payroll and losses may also be referred to as data. The experience used in a modification is determined by Rule 2-E.

CURRENT

E. EXPERIENCE PERIOD

The experience period used in a risk's modification generally consists of three completed years of experience ending one year prior to the effective date of the modification. For example, in an experience modification effective 7-1-84, the experience period would contain experience from policies effective 7-1-80, 7-1-81 and 7-1-82.

PROPOSED

RULE 2—EXPERIENCE RATING ELEMENTS AND FORMULA

E. EXPERIENCE TO BE USED IN A RATING

1. Experience Period

Experience rating uses past payroll and losses to predict future losses. The experience period represents the total amount of this data used in an experience rating. The calculation of a risk's experience rating modification must include all eligible experience developed during the experience period.

- a. A risk's rating effective date determines its experience period. Experience for each of a risk's policies is included if the policy effective date is:
 - (1) Not less than 21 months before the rating effective date, and
 - (2) Not more than 57 months before the rating effective date.
- b. A risk's experience period cannot contain more than 45 months of data. The 45 month limitation is a maximum period of time between the expiration date of the most recent policy and the effective date of the oldest policy. While the experience period may not exceed 45 months, an experience rating modification may be produced with less than 12 months of data. The amount of data included in a risk's experience period may be impacted for reasons including, but not limited to:
 - Short-term policies
 - Cancellations
 - Gaps in coverage
 - Changes in ownership or combinability status
 - Rating effective date changes
 - Multiple policy effective dates
 - Policies longer than one year and 16 days
 - Wrap-up policies
 - Interstate operations
- c. If both the most recent and oldest policies fit within this experience period, and the inclusion of both policies would exceed 45 months, the oldest policy is not used.
- d. Based on a risk's rating effective date:
 - (1) A risk's most current data, excluding 4th and 5th reports, is used to calculate experience rating modifications. *Refer to the **Statistical Plan** for valuation date information.*
 - (2) An individual policy's 1st, 2nd, and 3rd report data may be used in more than three experience rating modifications. However, the policy must be eligible for inclusion according to Rule 2-E-1-a., b., and c.

*For effective date ranges, refer to the Experience Period Reference Table located in the **User's Guide**.*

*Refer to the **User's Guide** for examples.*

CURRENT

F. EXPERIENCE RATING MODIFICATION

The experience rating modification is a factor applied to premium to reflect a risk's variation from the average risk. Using the risk's own past experience, the experience modification is determined by comparing actual losses to expected losses.

This comparison of losses results in a premium reduction (credit) or a premium increase (debit). For example, a modification of .75 results in a 25% credit or savings to the risk, while a modification of 1.10 produces a 10% debit or additional charge to the risk. In some cases, no change results and a modification of 1.00 (unity) is applied.

G. ANNIVERSARY RATING DATE

The anniversary rating date is the effective month and day of the policy or policies in effect unless a different date has been established by the rating organization.

Note: For examples of application of this rule to rewritten or long-term policies, refer to Part Three, Administration of the Plan.

PROPOSED

COMMENT: This information is addressed in proposed Rule 1-A and the *User's Guide*, Section A-1, as noted earlier in this comparison.

RULE 2—EXPERIENCE RATING ELEMENTS AND FORMULA

B. RATING DATES

1. Anniversary Rating Date (ARD)

The anniversary rating date is the effective month and day of the policy in effect and each anniversary thereafter unless a different date has been established by the rating organization. *Refer to the Basic Manual for more information on anniversary rating date.*

2. Rating Effective Date (RED)

a. The rating effective date appears on a risk's experience rating worksheet. It is the earliest date that a specific modification is applied to a policy. To determine experience rating modification application, *refer to Rule 4-D.*

The rating organization establishes the rating effective date. In most cases, a risk's rating effective date is the same as its anniversary rating date.

Note: Wrap-up policies are not used to determine rating effective dates. *Refer to Rule 5-E-1 for information on wrap-up policies.*

b. The rating effective date may differ from a risk's anniversary rating date for reasons including, but not limited to:

- Short-term policies
- Cancellations
- Gaps in coverage
- Changes in ownership or combinability status
- Multiple policy effective dates
- Interstate operations
- A policy that is longer than one year and 16 days
- Late receipt of current policy information by the rating organization

To determine a risk's rating effective date, the rating organization will apply the Rating Effective Date Determination Table in conjunction with a review of the most recent full-term policies and unit statistical data. For purposes of this rule, a full-term policy is written for 12 months and is not cancelled prior to its expiration date.

CURRENT

H. WRAP-UP CONSTRUCTION PROJECT

A wrap-up construction project is a construction, erection or demolition project for which policies have been issued by one or more insurance carriers under the same management to insure two or more legal entities engaged in such a project. The entities insured shall be limited to the general contractor (including any owner or principal acting as a general contractor) and subcontractors performing work under contracts let on an ex-insurance basis. If the contract between the owner or principal and such general contractor is on an ex-insurance basis, the owner or principal is an eligible entity for the combination.

PROPOSED

Rating Effective Date Determination Table

If the risk is . . .	Then the rating effective date is . . .
<ul style="list-style-type: none"> • A single policy intrastate or interstate risk, or • A multiple policy intrastate or interstate risk with all policies having the same effective date 	The effective month and day of the most recent full-term policy in effect and each policy thereafter unless the date is changed due to a reason listed above.
A multiple policy intrastate risk with policies having different effective dates	The effective month and day of the most recent full-term policy in effect with the largest amount of estimated standard premium.
A multiple policy interstate risk with policies having different effective dates	The effective month and day of the most recent full-term policy in effect for the state with the largest amount of estimated standard premium.

*Refer to the **User's Guide** for examples.*

RULE 5—SPECIAL RATING CONDITIONS

E. CONSTRUCTION/CONTRACTING RISKS

1. Wrap-Up Construction Project

A policy issued for an entity participating in a wrap-up construction project is subject to its own experience rating modification. Payroll and loss experience developed for all such policies is used in future experience rating modifications of the participating entities. There is no experience rating modification for the wrap-up construction project as a unit. *Refer to the **Basic Manual** for more information on wrap-up construction projects.*

CURRENT

III. ELIGIBILITY FOR THE PLAN

A. A risk is eligible for intrastate experience rating when it develops a qualifying premium based on payrolls or other exposures reported in accordance with the **Statistical Plan Manual**. See the Appendix for a listing of qualifying premium amounts for each state.

For risks operating in more than one state, refer to Part Four of this Plan.

Note: A policy shall not be canceled, rewritten or extended for purposes of enabling a risk to qualify for, or avoid application of, this Plan.

TABLE OF PREMIUM ELIGIBILITY AMOUNTS BY STATE (FROM APPENDIX)

A risk is eligible for intrastate experience rating when the payrolls or other exposures developed in the last year or last two years of the experience period produced a premium of at least the amount shown in Column A. Or, if more than two years, an average annual premium of at least the amount shown in Column B is required.

COMMENT: Please note that the list of state eligibility amounts is currently in the appendix. The list is included in proposed Rule 2-A-2.

PROPOSED

RULE 1—GENERAL EXPLANATIONS

C. DEFINITIONS

7. Subject Premium

Subject premium is reported according to the **Statistical Plan**. For experience rating purposes, subject premium developed for an individual risk during:

- a. Its experience period is used to determine a risk's eligibility according to Rule 2-A.
- b. The policy period to which the experience rating modification applies, is multiplied by the experience rating modification factor.

RULE 2—EXPERIENCE RATING ELEMENTS AND FORMULA

A. PREMIUM ELIGIBILITY

1. Premium

a. Subject Premium

A risk's eligibility for this Plan is based on the amount of subject premium as defined in Rule 1-C-7. Refer to Rule 2-A-2 and the State Table of Subject Premium Eligibility Amounts to determine premium eligibility for a specific risk.

b. Not Subject to Experience Rating

According to the **Statistical Plan**, some premium elements are not subject to experience rating. Premium may be charged for these elements under the standard policy. This premium is not:

- Subject to increase or decrease by an experience rating modification factor
- Used to determine premium eligibility for experience rating as detailed in Rule 2-A-2
- Used in the calculation of an experience rating modification, unless otherwise stated in this Plan or the **Basic Manual**.

2. State Subject Premium Eligibility Amounts

A risk qualifies for experience rating when its subject premium, developed in its experience period, meets or exceeds the minimum eligibility amount. Refer to Rule 2-E-1 to determine a risk's experience period.

- a. A risk qualifies for experience rating if its data within the most recent 24 months of the experience period develops a subject premium of at least the amount shown in Column A.
- b. A risk may not qualify according to Rule 2-A-2-a. If it has more than the amount of experience referenced in Rule 2-A-2-a, then to qualify for experience rating the risk must develop an average annual subject premium of at least the amount shown in Column B. Refer to Rule 2-A-3 to determine average annual subject premium.

CURRENT

PROPOSED

RULE 2—EXPERIENCE RATING ELEMENTS AND FORMULA

A. PREMIUM ELIGIBILITY

3. Average Annual Subject Premium

Determine a risk's average subject premium on an annual basis for experience rating eligibility purposes as follows:

$$\frac{\text{Total Subject Premium}}{\text{Total Months of Experience in Experience Period (excluding gaps in coverage)}} \times 12 = \text{Average Annual Subject Premium}$$

When the average annual subject premium is determined, *refer to Column B in Rule 2-A-2 for premium eligibility requirements.* The reference to total months of experience in this calculation includes partial months.

Refer to the User's Guide, B-1-a for examples.

4. Intrastate Experience Rating

A risk qualifies for experience rating on an intrastate (single-state) basis when it meets the premium eligibility requirements for the state in which it operates. *Refer to the State Table of Subject Premium Eligibility Amounts for the minimum subject premium requirements.* Qualifying subject premium is based on payroll or other exposures reported in accordance with the **Statistical Plan**.

Refer to the User's Guide, B-1-b for examples.

5. Interstate Experience Rating

- a. A risk qualifies for experience rating on an interstate (multi-state) basis when it:
 - (1) Meets the premium requirement for intrastate rating in any one state, and
 - (2) Develops experience during the experience period in one or more additional states where this Plan applies or where the independent rating organization Plan permits combination for interstate rating.
- b. The experience developed in each additional state does not have to meet the premium requirement for intrastate rating.
- c. The interstate modification applies to all of the risk's operations even if coverage is written under separate policies.
- d. If a risk expands operations into one or more additional states, its experience rating modification applies to the additional state(s) operations as of the date of expansion. Experience for such operations will be included in the calculation of future modifications.
- e. If a risk is intrastate rated in an independent bureau state that participates in the interstate experience rating plan, Rule 2-A-5-a. through d. applies.

Refer to the User's Guide, B-1-c for examples.

CURRENT

- B. The following shall be excluded from the determination of premium eligibility under this Plan:
1. Loss Constants
 2. Expense Constants
 3. The policy minimum premium
 4. Premium developed by the occupational disease rates for risks subject to the Federal Coal Mine Health and Safety Act
 5. Premium under the National Defense Projects Rating Plan
 6. The seat surcharge premium for Aircraft Operation
 7. Premium under "Atomic Energy"
 8. Premium developed under Three-Year Fixed-Rate policies
 9. Premium for Migrant and Seasonal Agricultural Worker Protection Act coverage

PROPOSED

COMMENT: The list of items that are to be excluded from experience rating are not included in the proposed rules. All of these items are properly listed in the *Statistical Plan* with statistical codes indicating that the premium developed under these codes are not subject to experience rating. There are many premium elements not subject to experience rating that are provided in the *Statistical Plan* but not listed in the current *Experience Rating Plan Manual*.

CURRENT

PART TWO

OPERATION OF THE PLAN

Experience modifications for eligible risks generally are determined on an annual basis and are effective for a period of twelve months. Refer to Part Three for examples of exceptions to this rule.

Only one experience modification shall apply to a risk at any time and it shall apply to all operations of the risk.

Experience modifications shall be applied to the premium developed by the use of the carrier's rates in force on the effective date of the experience modification.

Exception: The following premiums are not subject to an experience rating modification:

1. Loss Constants
2. Expense Constants
3. The policy minimum premium
4. The minimum premium for coverage under the Admiralty Law and the Federal Employers' Liability Act
5. Premium under the National Defense Projects Rating Plan
6. The seat surcharge for aircraft operation—Code 9108
7. Premium under the Atomic Energy classifications—Codes 9984 and 9985
8. Premium developed by the occupational disease rates for risks subject to the Federal Coal Mine Health and Safety Act
9. Premium developed under Three-Year Fixed-Rate policies
10. The non-ratable elements of the manual rates for those classifications enumerated in the Table of Classifications with Non-Ratable Elements in the Appendix.
11. Premium for Migrant and Seasonal Agricultural Worker Protection Act coverage.

PROPOSED

RULE 4—APPLICATION AND REVISION OF EXPERIENCE RATING MODIFICATIONS

A. GENERAL EXPLANATION

1. Experience rating modifications for eligible risks generally are determined on an annual basis and are effective for a period of 12 months. However, as provided in this Plan, certain circumstances may result in a reduced or extended application of an experience rating modification. *Refer to Rule 4-D.*
2. Only one experience rating modification applies to a risk at any time and it applies to all operations of the risk.
3. Experience rating modifications are applied to the premium developed by the use of the carrier's rates in force on the effective date of the experience rating modification.

COMMENT: The list of items that are to be excluded from experience rating are not included in the proposed rules. All of these items are properly listed in the **Statistical Plan** with statistical codes indicating that the premium developed under these codes are not subject to experience rating. There are many premium elements not subject to experience rating that are provided in the **Statistical Plan** but not listed in the current **Experience Rating Plan Manual**. Premium elements that are not subject to experience rating are also not included in the experience rating calculation, unless otherwise stated in this Plan or the **Basic Manual**.

CURRENT

A. EXPERIENCE MODIFICATION FORMULA

The experience modification for all risks is determined from the following formula.

$$\begin{array}{r}
 \text{Actual Primary Losses} \\
 + \text{Ballast Value} \\
 + \text{Weighting Value Times Excess Losses} \\
 + \text{(1 Minus Weighting Value) Times Excess Losses} \\
 = \text{Total A}
 \end{array}$$

For experience modification, divide Total A by Total B; round to two decimal places.

B. EXPLANATION OF TERMS

1. EXPECTED LOSS RATE

The Expected Loss Rate is the factor used to determine the amount of expected losses by classification for each \$100 of payroll. These factors can be obtained from the Tables of Expected Loss Rates and Discount Ratios in this Plan.

2. EXPECTED LOSSES

Expected losses for each classification are obtained by multiplying the expected loss rate by the payroll divided by \$100. Total expected losses for the risk are obtained by adding the expected losses for each classification.

3. DISCOUNT RATIO

The Discount Ratio is the factor used to determine the amount of expected losses for each classification that are Expected Primary Losses. These factors can be obtained from the Tables of Expected Loss Rates and Discount Ratios.

4. EXPECTED PRIMARY LOSSES

These are obtained by multiplying the expected losses by the Discount Ratio.

PROPOSED

RULE 2—EXPERIENCE RATING ELEMENTS AND FORMULA

D. EXPERIENCE RATING FORMULA

1. The experience rating modification formula:

- Is used to determine the experience rating modification for all risks eligible for experience rating.
- Includes the data of all states in a risk's experience period to produce an experience rating modification.

Primary Losses		Stabilizing Value		Ratable Excess		Totals
Actual Primary Losses	+	(1 minus Weighting Value) x Expected Excess Losses	+	Ballast Value	+	Weighting Value x Actual Excess Losses = Total A
Expected Primary Losses	+	(1 minus Weighting Value) x Expected Excess Losses	+	Ballast Value	+	Weighting Value x Expected Excess Losses = Total B

For the experience rating modification, divide Total A by Total B, then round to two decimal places.

Refer to the *User's Guide* for an example.

COMMENT: Minor change to appearance of formula in the Plan. Proposed presentation matches the experience rating modification worksheet.

RULE 2—EXPERIENCE RATING ELEMENTS AND FORMULA

C. ELEMENTS OF EXPERIENCE RATING FORMULA AND WORKSHEET

1. Expected Loss Rate (ELR):

The Expected Loss Rate (ELR) is a factor applied to each \$100 of payroll for a classification. It determines the amount of expected losses for a classification in a particular state.

ELRs are listed in the Tables of Expected Loss Rates and Discount Ratios in the state pages of this Plan.

2. Expected Losses

The expected losses for each classification are determined by multiplying the payroll divided by \$100 times the ELR. The result is rounded to the nearest whole number. Within the experience rating calculation, the expected losses represent the benchmark level of losses expected for all employers in a state within a particular classification. It is against this benchmark that individual employers are compared, based on their actual losses.

3. Discount Ratio (D-Ratio)

The Discount Ratio (D-Ratio) is a factor applied to the expected losses for each classification. It determines the portion of a risk's expected losses that are expected to be primary losses. Discount Ratios are listed in the Tables of Expected Loss Rates and Discount Ratios in the state pages of this Plan.

4. Expected Primary Losses

Expected Primary Losses for each classification are determined by multiplying the Discount Ratio times the expected losses. The result is rounded to the nearest whole number. Within the experience rating calculation, the expected primary losses represent the benchmark level of primary losses for all employers in a state within a particular classification. It is against this benchmark that individual employers are compared, based on their actual primary losses.

CURRENT

- 5. EXPECTED EXCESS LOSSES**
Expected Excess Losses are obtained by subtracting the expected primary losses from the expected losses.
- 6. ACTUAL PRIMARY LOSSES**
Actual Primary Losses reflect claim frequency. The maximum primary value for each loss is \$5,000.
For each loss equal to or less than \$5,000, the entire amount is used as the primary value. For each loss over \$5,000, the primary value is \$5,000.
For medical only losses (injury type 6), the primary value will be reduced by 70%.
- 7. ACTUAL EXCESS LOSSES**
Actual Excess Losses are obtained by subtracting the actual primary losses from the actual incurred losses.
For medical only losses (injury type 6), the excess is calculated by first subtracting the actual primary losses before the medical only reduction from the actual incurred losses. Then, this excess value will be reduced by 70%.
- 8. WEIGHTING VALUE**
This value is a ratio that determines the percentage of excess losses to enter the experience rating calculation. It is applied to both actual excess losses and expected excess losses.
The Weighting Value is a value between .07 and .63 which increases as expected losses increase. These values may be obtained from the Tables of Weighting and Ballast Values in this Plan.

PROPOSED

- 5. Actual Incurred Losses**
For purposes of experience rating, Actual Incurred Losses are those reported according to the *Statistical Plan*.
For each medical-only claim, the amount is reduced by 70%.
- 6. Actual Primary Losses**
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.
For each medical-only claim, the primary amount is reduced by 70%.
- 7. Expected Excess Losses**
Expected Excess Losses are determined by subtracting the total expected primary losses from the total expected losses. Within the experience rating modification calculation, the expected excess losses represent the benchmark level of losses in total, for the portion of all claims in excess of \$5,000. It is against this benchmark that individual employers are compared, based on their actual excess losses.
- 8. Actual Excess Losses**
Actual Excess Losses are determined by subtracting the total actual primary losses from the total 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.
For each medical-only claim, the excess amount, using full value incurred and primary losses, is reduced by 70%.
- 9. Weighting Value**
The Weighting Value is a factor that is applied to a risk's actual excess losses and the expected excess losses. The result is rounded to the nearest whole number. The weighting value determines how much of the actual excess losses and expected excess losses are used in an experience rating. The weighting value increases as expected losses increase. The Tables of Weighting Values are contained in the state pages of this Plan. Each state's weighting value is based on the total expected losses of the risk.
An interstate risk's weighting value is an average, determined as follows:
 - a. Multiply each state's weighting value by the state's expected losses.
 - b. Total the results from all states in a.
 - c. Divide the total in b. by the risk's total expected losses.
 - d. Round the result of c. to two decimal places.

CURRENT

9. BALLAST VALUE

This value is a stabilizing element designed to limit the effect of any single loss on the experience modification. It is added to both the actual primary losses and expected primary losses.

The Ballast Value increases as expected losses increase. These values may be obtained from the Tables of Weighting and Ballast Values in this Plan.

COMMENT: "Stabilizing Value" and "Ratable Excess" are defined in the Plan because they are shown on the formula provided on the experience rating worksheet.

PROPOSED

10. Ballast Value

The Ballast Value is a stabilizing element designed to limit the effect of any single loss on the experience rating modification. It is added to both the actual primary losses and expected primary losses. The ballast value increases as expected losses increase.

These values may be obtained from the Tables of Ballast Values in this Plan. Each state's ballast value is based on the total expected losses of the risk.

An interstate risk's ballast value is an average, determined as follows:

- a. Multiply each state's ballast value by the state's expected losses.
- b. Add the product for all states in a.
- c. Divide the total in b. by the risk's total expected losses.
- d. Round the result of c. to the nearest whole number.

11. Stabilizing Value

The Stabilizing Value is determined as follows:

$$\text{Expected Excess Losses} \times (1 - \text{Weighting Value}) + \text{Ballast Value}$$

The result is rounded to the nearest whole number. The stabilizing value is included in both the actual and expected portions of the experience rating calculation formula. It limits the potential for significant variances in the experience rating modification factor from one year to the next. Its most significant impact is on smaller risks, which have a greater likelihood for severe swings in experience rating modification factors.

12. Ratable Excess

a. Expected Ratable Excess Losses

Expected Ratable Excess Losses are determined by multiplying the weighting value times the expected excess losses. The result is rounded to the nearest whole number. Within the experience rating calculation, the expected ratable excess losses represent, in total, the benchmark level of excess losses for all similarly classified employers. It is against this benchmark that individual employers are compared, based on their actual ratable excess losses.

b. Actual Ratable Excess Losses

Actual Ratable Excess Losses are determined by multiplying the weighting value times the actual excess losses. The result is rounded to the nearest whole number. For each actual incurred loss exceeding \$5,000, only a portion of the loss amount above \$5,000 (the excess portion) is used. Within the experience rating calculation, the actual ratable excess losses represent, in total, the amount of actual excess losses to be used.

CURRENT

C. EXPERIENCE TO BE USED IN A RATING

1. GENERAL EXPLANATION

The experience rating of a risk shall include all the experience it developed during the experience period, valued at least three months prior to the rating date. Any experience is subject to verification by the rating organization.

2. EXPERIENCE PERIOD

The experience period used in a risk's modification generally consists of three completed years of experience ending one year prior to the effective date of the modification. For example, in an experience modification effective 7-1-84, the experience period would contain experience from policies effective 7-1-80, 7-1-81 and 7-1-82.

Extension of the experience period to a maximum of 3¾ years is allowed only under the following circumstances:

- (a) If the earliest policy period falls outside the normal three year period and its inclusion does not result in an experience period exceeding 3¾ years. Or,
- (b) If the earliest policy period is preceded by a short-term policy which has been used in only two previous ratings and its inclusion does not result in an experience period exceeding 3¾ years.

Note: Experience must be valued at least three months prior to the rating date, as provided in rule 1 above.

3. MULTIPLE POLICY RISKS

For risks involving two or more policies with varying expiration dates, the experience period rule applies.

PROPOSED

RULE 2—EXPERIENCE RATING ELEMENTS AND FORMULA

E. EXPERIENCE TO BE USED IN A RATING

1. Experience Period

Experience rating uses past payroll and losses to predict future losses. The experience period represents the total amount of this data used in an experience rating. The calculation of a risk's experience rating modification must include all eligible experience developed during the experience period.

- a. A risk's rating effective date determines its experience period. Experience for each of a risk's policies is included if the policy effective date is:

- (1) Not less than 21 months before the rating effective date, and
- (2) Not more than 57 months before the rating effective date.

- b. A risk's experience period cannot contain more than 45 months of data. The 45 month limitation is a maximum period of time between the expiration date of the most recent policy and the effective date of the oldest policy. While the experience period may not exceed 45 months, an experience rating modification may be produced with less than 12 months of data. The amount of data included in a risk's experience period may be impacted for reasons including, but not limited to:

- Short-term policies
- Cancellations
- Gaps in coverage
- Changes in ownership or combinability status
- Rating effective date changes
- Multiple policy effective dates
- Policies longer than one year and 16 days
- Wrap-up policies
- Interstate operations

- c. If both the most recent and oldest policies fit within this experience period, and the inclusion of both policies would exceed 45 months, the oldest policy is not used.

- d. Based on a risk's rating effective date:

- (1) A risk's most current data, excluding 4th and 5th reports, is used to calculate experience rating modifications. *Refer to the **Statistical Plan** for valuation date information.*
- (2) An individual policy's 1st, 2nd, and 3rd report data may be used in more than three experience rating modifications. However, the policy must be eligible for inclusion according to Rule 2-E-1-a., b., and c.

For effective date ranges, *refer to the Experience Period Reference Table located in the **User's Guide**.*

*Refer to the **User's Guide** for examples.*

CURRENT

4. NON-MEMBER CARRIERS' DATA

Experience data of non-member carriers may be included in an experience rating, subject to verification by the rating organization.

5. SELF-INSURERS' DATA

The experience data of self-insurers may be included in an experience rating only if such data is submitted on an approved form (see example in Appendix) providing specific payroll and loss information, and if the operations that produced the self-insured experience are to be insured under a Workers Compensation and Employers Liability Policy.

Support documentation by the employer must be included with any carrier submission of self-insured data, and shall be subject to verification by the rating organization.

6. COST PLUS CONTRACTS

If a contractor performs a construction job on a cost plus basis and a policy is issued to cover both the contractor and the principal, the contractor's experience modification shall apply to the policy and the experience developed under the policy shall be considered experience of the contractor.

7. UNINSURED CONTRACTORS

Experience developed on work performed by an uninsured contractor and reported in accordance with the *Statistical Plan Manual* shall be considered the experience of the primary contractor or principal.

PROPOSED

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

- a. Experience of risks insured by non-affiliate self-insurers and non-affiliate carriers may be included in an experience rating.
- b. The data must be submitted to the rating organization in an approved format (see ERM-6 Form in Appendix). The data is subject to verification by the affiliate self-insurer or affiliate carrier submitting the data for inclusion in an experience rating.
- c. The affiliate self-insurer or affiliate carrier requesting the data inclusion must be the risk's insurer during the time for which the modification including non-affiliate data would apply.
- d. For multiple insurer risks, agreement from only one of the risk's insurers, during the time for which the modification would apply, is required.
- e. The non-affiliate self-insurer or non-affiliate carrier data will not be used to determine premium eligibility.

COMMENT: Affiliate self-insured funds are required to report data to the rating organization according to the Statistical Plan. Affiliate ERM-6 forms are no longer accepted, therefore a special rule to differentiate affiliate self-insureds from affiliate carriers is no longer necessary.

RULE 5—SPECIAL RATING CONDITIONS

E. CONSTRUCTION/CONTRACTING RISKS

3. Cost-Plus Contracts

Under a cost-plus contract, the principal agrees to compensate the contractor based on the cost of the work performed plus a fixed fee. A policy covering both the contractor and the principal is:

- Assigned the experience rating modification of the contractor.
- Included in the experience of the contractor.

4. Uninsured Contractors

The experience of an uninsured contractor is included in the experience of the principal contractor or the principal owner.

CURRENT

- 8. UNITED STATES LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT COVERAGE**
- a. Experience ratings containing classifications where the rates include coverage under the USL&HW Act are calculated using the formula described in A.
 - b. Classifications subject to the USL&HW Act, but not followed by the letter "F" in the Table of Expected Loss Rates and Discount Ratios, have their expected losses determined by applying the USL&HW Act Expected Loss Factor in that table, to the state expected loss rate.
- 9. EX-MEDICAL EXPERIENCE**
- If coverage is provided on an ex-medical basis as permitted by Rule IX-E of the *Basic Manual*, the experience modification is calculated using the formula described in A., with the following exception:
- Apply the ex-med multiplier to convert the total expected losses for each classification to an ex-medical basis. The ex-med multiplier is determined by the following formula:
- 1.00 minus (1.30 x classification ex-med ratio)
- Refer to the rating organization for state ex-medical ratios.
- 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.

PROPOSED

RULE 2—EXPERIENCE RATING ELEMENTS AND FORMULA

D. EXPERIENCE RATING FORMULA

3. United States Longshore and Harbor Workers' Compensation (USL&HW) Act Coverage

Experience ratings containing classifications where the rates include coverage under the USL&HW Act are calculated using the formula described in Rule 2-D-1.

Classifications subject to the USL&HW Act, but not followed by the letter "F" in the Table of Expected Loss Rates and Discount Ratios, have their expected losses determined by applying the USL&HW Act Expected Loss Factor, to the expected loss rate (ELR) for such classifications.

RULE 5—SPECIAL RATING CONDITIONS

B. EX-MEDICAL EXPERIENCE

If coverage is provided on an ex-medical basis as permitted by the *Basic Manual* rules, the experience rating modification is calculated using the formula described in Rule 2-D of this Plan, with the following exception:

Apply the ex-med multiplier to convert the total expected losses for each classification to an ex-medical basis. The ex-med multiplier is determined by the following formula:

$$1.00 - (1.30 \times \text{Classification Ex-Medical Ratio})$$

Refer to the rating organization for state ex-medical ratios.

RULE 3—OWNERSHIP CHANGES AND COMBINATION OF ENTITIES

E. TREATMENT OF EXPERIENCE

1. Transfer of Experience

Changes in ownership or combination status may or may not result in revisions of experience rating modifications. The rating organization may issue, retract and/or revise the current and up to two preceding modifications due to ownership or combination status changes. The rating organization will request separate data from the carrier when appropriate. In certain cases, documentation may be needed to validate the accuracy of the submitted data.

The experience for any entity undergoing a change in ownership will be retained or transferred to the experience ratings of the acquiring, surviving or new entity unless specifically excluded by this Plan.

CURRENT

- (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.
- (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.

PROPOSED

Transfer of Experience Table 1

If the single or multiple entity risk disposes of all of its operations and the purchaser ...	Then...
Does not have any prior or current policies or experience	The experience will be retained in the future experience ratings of the purchaser, subject to <i>Rule 2-A</i> .
<ul style="list-style-type: none"> • Has prior experience, for which an experience rating modification has already been issued, or • Has prior experience, but did not qualify for experience rating 	The experience will be retained in the future experience ratings of the purchaser and combined with the other experience of the purchaser, subject to <i>Rule 2-A</i> .

Transfer of Experience Table 2

If the single or multiple entity risk ...	And the purchaser...	Then...
<ul style="list-style-type: none"> • Disposes of part of its operations, and • Otherwise continues to operate its business, and • Its statistical data has been combined on a single policy, and • The insurance provider can furnish the rating organization with the appropriate experience to provide for transfer of the data to the purchaser 	Does not have any experience	<ul style="list-style-type: none"> • The appropriate experience will be retained in the future experience ratings of the purchaser, subject to <i>Rule 2-A</i>. • The same experience will be excluded from the future experience ratings of the seller. • If the separated experience results in the seller, purchaser, or both, not qualifying for experience rating, a unity factor (1.00) will apply to the non-qualifying risk until qualifying experience is developed.
	<ul style="list-style-type: none"> • Has experience but does not qualify for experience rating, or • Is an experience rated risk 	<ul style="list-style-type: none"> • The appropriate experience will be retained in the future experience ratings of the purchaser and combined with the other experience of the purchaser, subject to <i>Rule 2-A</i>. • The same experience will be excluded from the future experience ratings of the seller. • If the separated experience results in the seller, purchaser, or both, not qualifying for experience rating, a unity factor (1.00) will apply to the non-qualifying risk until qualifying experience is developed.
<ul style="list-style-type: none"> • Disposes of part of its operations, and • Otherwise continues to operate its business, and • Its statistical data has been combined on a single policy, and • The insurance provider cannot furnish the rating organization with the appropriate experience to provide for transfer of the data to the purchaser. 	<ul style="list-style-type: none"> • Does not have any experience, or • Has experience but does not qualify for experience rating 	<ul style="list-style-type: none"> • A unity factor (1.00) will apply to the purchaser's policy until qualifying experience is developed. • All experience developed prior to the sale remains in future ratings of the seller.
	Is an experience rated risk	<ul style="list-style-type: none"> • The purchaser's experience rating modification will continue to apply. Any experience developed by the purchased entity after the sale will be used in future ratings of the purchaser. • All experience developed prior to the sale remains in future ratings of the seller.

CURRENT

- 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.

11. EMPLOYEE LEASING

- a. If coverage for leased workers was provided under a policy issued to a labor contractor and is subsequently provided under a policy issued to the client and the experience of the client is commingled with that of other clients on the labor contractor's (lessor's) policy, the following procedure shall apply:
The experience of the client shall be developed and reported to the rating organization by the insurance carrier, to the extent possible, for use in development of an experience modification for the client. If suitable payroll and loss experience is not reported to the rating organization, the labor contractor's experience modification will apply to the client for up to 3 years or until such time as the client otherwise qualifies for development of its own experience modification.

PROPOSED

3. Recalculation and Application of Experience Rating Modifications

- a. If a change in ownership and/or combinability status occurs, recalculation of experience rating modifications may be required, as described in the table below. Changes in ownership and/or combinability status may also result in a change in rating effective date, as determined by the rating organization.

If the first written reporting of the change by either the acquiring entity or acquired entity to their carrier or the rating organization occurs...	Then the recalculation and application of the revised experience rating modification(s) will be as of the...
Within 90 days of the date of the change	Date of the change
More than 90 days after the date of the change	Next rating effective date following the earliest notice of the change received by a carrier or the rating organization

- b. Recalculation and application of experience rating modifications in conjunction with this rule is subject to Rules 3-F and 4-E.

RULE 5—SPECIAL RATING CONDITIONS

A. EMPLOYEE LEASING/PROFESSIONAL EMPLOYER ORGANIZATIONS

1. Employee Leasing/Professional Employer Organization (PEO) Arrangements

The *Basic Manual* provides the rules under which policies involving employee leasing arrangements are written. *Refer to the Basic Manual state pages for these rules.* An employee leasing company may also be referred to as a labor contractor, professional employer organization, or PEO.

In a normal business environment, a risk may be insured for many years through a direct relationship with one or more insurance carriers. Under employee leasing, clients may move in and out of leasing arrangements or from one arrangement to another. These Plan rules address the calculation and application of experience rating modifications for such arrangements.

2. Calculation and Application of Experience Rating Modification

a. While a Client is Involved in an Employee Leasing Arrangement

Experience rating modifications apply to PEOs and clients while in an employee leasing arrangement. PEO Table 1 provides the rules for both master policy and multiple coordinated policy (MCP) scenarios. *Refer to the User's Guide for examples.*

CURRENT

- b. If coverage for leased workers was provided under a policy issued to a labor contractor and is subsequently provided under a policy issued to the client and the client was covered under the multiple coordinated policies basis, the following procedure shall apply:
 The client shall be assigned an experience modification factor which reflects its experience during the experience period, including experience incurred for leased employees under the employee leasing arrangement.

PROPOSED

PEO Table 1

The arrangement is covered under a . . .	Client	PEO
Master policy	<ol style="list-style-type: none"> 1. For master policies covering the client's leased employees, the PEO's experience rating modifications apply. 2. For policies covering the client's non-leased employees, separate experience rating modifications apply, subject to premium eligibility requirements. These modifications will include all the client's experience, if any, prior to the leasing arrangement. 3. If the client does not qualify for experience rating based on its prior experience, a unity (1.00) factor applies to: <ul style="list-style-type: none"> • The policy covering the client's non-leased employees • Subsequent policies, until the client is eligible for an experience rating modification 	<ol style="list-style-type: none"> 1. The PEO's experience rating modifications apply to the master policies as well as any other policy of the PEO. 2. If the PEO does not qualify for experience rating, a unity (1.00) factor applies to: <ul style="list-style-type: none"> • The master policy and any other of the PEO's policies • Subsequent policies, until the PEO is eligible for an experience rating modification
Multiple coordinated policy (MCP) basis	<ol style="list-style-type: none"> 1. The client's experience rating modifications apply to: <ul style="list-style-type: none"> • The client's policy under the MCP • Any other policies covering the client's non-leased employees. These modifications will include the client's experience prior to the leasing arrangement, if any. 2. Subsequent experience rating modifications will include the client's experience for leased and non-leased employees developed during the leasing arrangement, and apply as detailed in 1. above. 3. If the client does not qualify for experience rating, a unity (1.00) factor applies to: <ul style="list-style-type: none"> • The client's policy under the MCP • Any other policies covering the client's non-leased employees • Subsequent policies, until the client is eligible for an experience rating modification 	<ol style="list-style-type: none"> 1. The PEO's experience rating modifications applies to the policies covering the PEO's direct employees. 2. If a PEO does not qualify for experience rating, a unity (1.00) factor applies to: <ul style="list-style-type: none"> • All of the PEO's policies • Subsequent policies, until the client is eligible for an experience rating modification.

CURRENT

PROPOSED

b. Upon Termination of a Client's Employee Leasing Arrangement

When a client terminates an employee leasing arrangement, experience rating modifications are impacted. PEO Table 2 provides the rules for both master policy and multiple coordinated policy (MCP) scenarios. *Refer to the User's Guide for examples.*

(1) Master Policy

When a client leaves an employee leasing arrangement covered under a master policy, the PEO's insurance provider reports the client's data developed during the employee leasing arrangement to the rating organization. NC2745 Form—Experience Rating Data for Former Clients of Labor Contractors is the only acceptable format for reporting this data. The data must be resubmitted prior to each renewal rating effective date.

PEO Table 2

The arrangement was covered under a master policy and . . .	Client	PEO
The insurance provider can furnish the rating organization with the appropriate experience to provide for transfer of the client's data	<ol style="list-style-type: none"> The rating organization will calculate the client's experience rating modification using the data reported on the NC2745 Form. This modification will include experience for the client's leased and non-leased (if any) employees during the experience period. Note: The PEO's experience rating modification applies to the client's new policy until the rating organization calculates the client's own experience-rating modification. The client's new experience rating modification will apply to the client's policy retroactive to the inception of the policy. If the client isn't eligible for experience rating based on the client's experience for leased and non-leased employees during the experience period, a unity (1.00) factor will apply to the client's policy until the client is eligible for an experience rating modification. 	The rating organization will revise the PEO's experience rating modification to remove the former client's data as reported on the NC2745 Form.
The insurance provider cannot furnish the rating organization with the appropriate experience to provide for transfer of the client's data	<ol style="list-style-type: none"> Then an experience rating modification is calculated for the client using experience developed: <ul style="list-style-type: none"> Prior to the employee leasing arrangement From policies covering non-leased employees If an experience rating modification cannot be developed, the PEO's experience rating modification applies to the client's policy until the client is eligible for its own experience rating modification. However, the PEO's experience rating modification cannot apply for more than three years. After three years, a unity (1.00) factor will apply to a client not eligible for experience rating. 	The client's experience remains in the PEO's experience rating modification.

CURRENT

D. PAYROLLS AND LOSSES

1. PAYROLLS

The audited payrolls or other exposures for each classification in the experience period are those reported in accordance with the *Statistical Plan Manual*.

2. LOSSES

The incurred losses in the experience period are those reported in accordance with the *Statistical Plan Manual*. No loss shall be excluded from the experience of a risk on the ground that the employer was not responsible for the accident that caused such loss. For purposes of this Plan, losses incurred under a state workers compensation law, the United States Longshore and Harbor Workers' Act, and Employers Liability Coverage shall be subject to the respective accident limitations shown in the Tables of Weighting and Ballast Values.

3. LIMITATION ON TOTAL LOSSES EMPLOYED IN A RATING

a. AN ACCIDENT INVOLVING ONE PERSON

An accident involving an injury to one person shall be limited to the accident limitation in the Tables of Weighting and Ballast Values. The actual primary loss for such an accident is subject to the maximum primary value of \$5,000.

PROPOSED

(2) Multiple Coordinated Policy (MCP)

No special treatment is necessary to develop an experience rating modification for the client when it leaves an employee leasing arrangement covered on a multiple coordinated policy basis. This is because the data is submitted routinely for each client according to the *Statistical Plan*, and experience rating modifications are calculated and applied as detailed in Rule 5-A-2-a.

RULE 1—GENERAL EXPLANATIONS

C. DEFINITIONS

2. Payroll

The audited payroll or other exposures for each classification in the experience period are those reported according to the *Statistical Plan*.

3. Losses

Incurred losses for each classification in the experience period are those reported according to the *Statistical Plan*.

- a. No loss is excluded from the experience of a risk even if the employer was not responsible for the accident that caused such loss.

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 May 27, 2002 through June 14, 2006.

- b. Loss amounts may be limited in the experience rating calculation. For application of a loss limitation, refer to Rule 2-C-13.

RULE 2—EXPERIENCE RATING ELEMENTS AND FORMULA

C. ELEMENTS OF EXPERIENCE RATING FORMULA AND WORKSHEET

13. Limitation of Losses Employed in a Rating

Losses are limited to the per claim or multiple claim limitations found in each state's Table of Weighting Values.

a. Single and Multiple Claim Limitation

Basic Loss Limitation

If . . .	Then . . .
A medical-only loss (injury type 6) exists	The actual incurred loss, actual primary loss, and actual excess loss amounts are reduced by 70%
An accident involves only one person	<ul style="list-style-type: none"> • The loss is subject to the per claim accident limitation • 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
An employers liability-only loss exists	<ul style="list-style-type: none"> • The loss is subject to the employers liability per claim accident limitation • 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

CURRENT

b. ACCIDENTS INVOLVING TWO OR MORE PERSONS

Accidents involving injuries to two or more persons shall be limited to the multiple claim accident limitation in the Tables of Weighting and Ballast Values, which is twice the normal accident limitation. The actual primary loss for such accidents is limited to \$10,000—twice the normal maximum

PROPOSED

Loss Limitations for Accidents Involving Two or More Persons Table 1

If an accident involves two or more persons, and. . .	Then . . .
The total of the losses exceeds the multiple claim accident limitation	<ul style="list-style-type: none"> • The total losses are subject to the multiple claim accident limitation • The actual primary loss for these accidents is limited to \$10,000, even if the losses do not exceed the multiple claim accident limitation
The total of the losses does not exceed the multiple claim accident limitation, and none of the individual losses within the total exceeds the state per claim accident limitation	<ul style="list-style-type: none"> • The individual losses are used at full value • The total actual primary losses for the accident are limited to \$10,000

Loss Limitations for Accidents Involving Two or More Persons Table 2

If an accident involves two or more persons, and the total of the losses does not exceed the multiple claim accident limitation, but an individual loss within the total exceeds the state per claim accident limitation, and...	Then the individual loss is limited to the state per claim accident limitation and...
<ul style="list-style-type: none"> • The total of the remaining losses exceeds \$5,000 	<ul style="list-style-type: none"> • The remainder of the losses are used at full value • The total actual primary losses for the accident are limited to \$10,000
<ul style="list-style-type: none"> • The total of the remaining losses does not exceed \$5,000 	<ul style="list-style-type: none"> • The remainder of the losses are used at full value • The actual primary loss is limited to \$5,000 for the individually limited loss • No actual primary loss limitation applies for the remainder of the losses

Refer to the *User's Guide* for examples.

CURRENT

c. DISEASE LOSSES

Disease losses for each policy year shall be limited to triple the accident limitation shown in the Tables of Weighting and Ballast Values, plus 120% of the risk's total expected losses for the experience period. For each policy year, the actual primary loss for disease losses is limited to \$10,000—twice the normal maximum primary value, plus 40% of the risk's total expected primary losses for the experience period.

Note: To determine the limitation on total disease losses employed in a rating as described in c., the following procedure shall apply:

- (1) Latest policy year—
Combine the disease losses of all policies within the experience period, having an effective date within 24 months prior to and valued at least 3 months prior to the experience rating date.
- (2) Middle policy year—
Combine the disease losses of all policies having an effective date more than 24 months, but not exceeding 36 months prior to the experience rating date.
- (3) Earliest policy year—
Combine the disease losses of all policies within the experience period, having an effective date more than 36 months prior to the experience rating date.

PROPOSED

b. Disease Loss Limitation

Disease losses are subject to per claim and multiple claim limitations. A limitation on total disease losses may also apply to an individual policy. This is in addition to the claim limitations already applied to individual disease losses under Rule 2-C-13-a.

- (1) To apply the disease loss policy limitation:
 - (a) Determine if a risk's individual policy total limited and nonlimited actual incurred disease losses exceed the policy disease limit of triple the per claim accident limitation shown in the Tables of Weighting Values, plus 120% of the risk's total expected losses for the experience period. If the risk-specific threshold is exceeded, the disease losses are limited to such threshold, and
 - (b) The actual primary losses are limited to \$10,000, plus 40% of the risk's total expected primary losses for the experience period.
 - (c) Round the result of (2) to the nearest whole number.
- (2) A policy's total disease losses may not meet the risk-specific policy limitation amount as determined in (a), but exceed the limitation shown in (b). In such circumstances, Rule 2-C-13-a applies.

Refer to the User's Guide for examples.

For risks that do not have an experience period of 36 months, determine policy disease losses as follows:

To determine the . . .	Combine the disease losses of all policies within the experience period having an effective date . . .
Most recent policy year	Within 24 months prior to the rating effective date
Middle policy year	More than 24 months but not exceeding 36 months prior to the rating effective date
Oldest policy year	More than 36 months prior to the rating effective date

CURRENT

4. REVISION OF LOSSES

Submission of revised unit reports to the rating organization, for purposes of automatically recalculating the current and up to two preceding experience modifications is required 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.
 - (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.
- e. A paid or anticipated recovery from a special fund becomes known by the carrier.

PROPOSED

RULE 4—APPLICATION AND REVISION OF EXPERIENCE RATING MODIFICATIONS

B. INCLUSION OF PAYROLL AND LOSSES

2. Revision of Losses

Revised unit reports (correction reports) to 1st, 2nd, and 3rd reports according to the **Statistical Plan** may be submitted. With limited exception as indicated below, the rating organization will use all correction reports in the production of the appropriate experience rating modifications.

- a. Submission of revised unit reports according to the **Statistical Plan** will result in the automatic recalculation of the current and up to two preceding experience rating modifications.
- b. If a paid or anticipated recovery from a special fund becomes known by the carrier, the current experience rating modification is that which is in effect when the insurance provider determines the revised loss value. The timeframe for the three (current and two preceding) modifications is limited to the risk's fifth most recent rating effective date.
- c. If a subrogation recovery is obtained in an action against a third party, the current experience rating modification is that in effect when the insurance provider determines the revised loss value. The timeframe for the three (current and two preceding) modifications is limited to the risk's fifth most recent rating effective date.

COMMENT: Circumstances that could result in submission of revised or corrected losses are addressed in the **Statistical Plan**. The rules in the **Experience Rating Plan** provide for the recalculation of experience rating modifications when revised losses are submitted.

CURRENT

Exception: The *Statistical Plan Manual* provides that if a decrease in loss value due to a subrogation or special fund recovery is less than 10% of the gross incurred cost of the claim, revised unit reports are not to be submitted.

For purposes of this rule's application to subrogation and special fund recovery situations:

- (1) the current experience modification is that in effect when the revised loss value is determined by the insurance provider.
- (2) the recalculation of experience modifications is limited to the five most recent modifications for a given risk. Application of revised experience modifications calculated according to a., b., c., d. and e. above is subject to Rule E.6 of Part Three of this Plan.

5. THIRD PARTY CASES

When a risk's incurred losses include losses for which a third party claim has been made, the inclusion of such losses in the experience rating calculation shall be as follows:

- a. **Unsettled claims**—Losses shall be included in the experience rating calculation.
- b. **Settled claims**—Losses shall be included but must be adjusted prior to use in the experience rating calculation. The incurred loss shall equal the loss prior to settlement minus the amount recovered from others, plus expenses incurred in obtaining the recovery.

In cases where recovery expense exceeds recovery amount, the incurred loss shall equal the loss prior to settlement.

PROPOSED

COMMENT: Circumstances that could result in submission of revised or corrected losses are addressed in the *Statistical Plan*. The rules in the *Experience Rating Plan* provide for the recalculation of experience rating modifications when revised losses are submitted.

RULE 4—APPLICATION AND REVISION OF EXPERIENCE RATING MODIFICATIONS

B. INCLUSION OF PAYROLL AND LOSSES

4. Third Party Cases

Losses for which a 3rd party claim has been made are included in the calculation of an experience rating modification under the following conditions:

a. Unsettled Claims

Use the loss as reported at full value.

b. Settled Claims

Use the following procedure to adjust the loss amount:

- (1) Determine loss amount prior to settlement
- (2) Subtract the amount recovered
- (3) Add the expenses incurred in obtaining the recovery
- (4) If the expense amount in (3) exceeds the recovery amount in (2), use the loss amount (1) prior to settlement

CURRENT

6. LIABILITY-OVER CASES

When a risk's incurred losses include liability-over claims, the inclusion of such losses in the experience rating calculation shall be as follows:

- a. Where settled liability-over claims result in no payment to a third party, the experience rating calculation shall include any allocated claim adjustment expense incurred in defending such claims. This expense is subject to the Employers Liability Accident Limitation in the Tables of Weighting and Ballast Values.
- b. Where settled liability-over claims result in payment to a third party, no change is made in the loss valuation used in the calculation of the current experience modification. At the next normal valuation date, the calculation shall include the settlement amount plus any allocated claim adjustment expense incurred in defending such claims. This expense and settlement is subject to the Employers Liability Accident Limitation in the Tables of Weighting and Ballast Values.

PROPOSED

RULE 4—APPLICATION AND REVISION OF EXPERIENCE RATING MODIFICATIONS

B. INCLUSION OF PAYROLL AND LOSSES

5. Liability-Over Cases

When a risk's incurred losses include liability-over claims, the inclusion of such losses in the experience rating calculation is as follows. When settled liability-over claims result in:

- a. No payment to a third party—The experience rating calculation will include any allocated claim adjustment expense incurred in defending such claims. This expense is subject to the Employers Liability Accident Limitation in the Tables of Weighting Values.
- b. Payment to a third party, no change is made in the loss valuation used in the calculation of the current experience modification. At the next valuation date, the calculation will include the settlement amount plus any allocated claim adjustment expense incurred in defending such claims. This expense and settlement is subject to the Employers Liability Accident Limitation in the Tables of Weighting Values.

CURRENT

PROPOSED

**PART THREE
ADMINISTRATION OF THE PLAN**

A. COMBINATION OF ENTITIES

1. The combination of two or more entities for purposes of this Plan requires common majority ownership. Two or more entities shall be combined only if:
 - a. The same person, group of persons or corporation owns more than 50% of each entity, or
 - b. An entity owns a majority interest in another entity, which in turn owns a majority interest in another entity. All entities are combinable for experience rating purposes regardless of the number of entities involved.

COMMENT: In the current Plan, there are three pie chart examples. These examples are now located in the new *User's Guide*.

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.

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.

COMMENT: The entire ownership rule has been restructured so that changes in ownership and combinability status are addressed from the beginning to the completion of the transaction. Therefore, for ease of presentation in this comparison, proposed Rule 3 is provided in its entirety.

RULE 3—OWNERSHIP CHANGES AND COMBINATION OF ENTITIES

A. REPORTING REQUIREMENT

The Notification of Change in Ownership Endorsement (WC 00 04 14) provides that changes in ownership and/or combinability status must be reported by the employer to its carrier(s) within 90 days of the date of the change. This may be accomplished by submitting:

- A completed Confidential Request for Information Form (see ERM-14 Form in Appendix), or
- The information in narrative form on the letterhead of the insured, signed by an officer of the insured entity

Failure to report changes in ownership according to Endorsement WC 00 04 14 may be considered modification evasion. *Refer to Rule 3-F.*

B. RESEARCH AND DECISION

The employer, carrier(s), or agent(s) of the employer may submit the ownership and/or combinability status information to the rating organization. The rating organization reviews the information submitted regarding each change and determines the impact, if any, on the experience rating modification(s) of the entities involved.

The complexity of certain transactions may require the rating organization to request additional information. The rating organization may also research public and/or other available records to verify provided information. This information is used to assist in clarifying complex situations or possible modification evasion. *Refer to Rule 3-F.*

Note: The rating organization only issues rulings for those risks that qualify for experience rating. However, the submitted information will be retained for future reference should a risk qualify for experience rating at a later date.

C. OWNERSHIP CHANGES

Changes in ownership interest may affect the use of an entity's experience in future experience ratings. Based on the rules of this Plan, when a change occurs, the rating organization will determine whether to exclude or retain an entity's experience. *Refer to Rule 3-A for reporting requirements.*

In addition, if the rating organization determines that the ownership transaction improperly affected the experience rating modification, it will take necessary action according to Rule 3-F.

1. Types of Ownership Changes

- a. For purposes of this Plan, a change in ownership includes any of the following:
 - (1) Sale, transfer, or conveyance of all or a portion of an entity's ownership interest.
 - (2) Sale, transfer, or conveyance of an entity's physical assets to another entity that takes over its operations
 - (3) Merger or consolidation of two or more entities
 - (4) Formation of a new entity that acts as, or in effect is, a successor to another entity that:
 - (a) Has dissolved
 - (b) Is non-operative
 - (c) May continue to operate in a limited capacity
 - (5) An irrevocable trust or receiver, established either voluntarily or by court mandate

CURRENT

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.

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.

PROPOSED

b. For purposes of this Plan, a change in ownership does not include the following:

- (1) Entities entering or leaving employee leasing arrangements
- (2) Creation or dissolution of joint ventures
- (3) Wrap-up projects
- (4) Establishment of or change in a revocable trust
- (5) Establishment of "debtor in possession" status
- (6) Entities entering or leaving affiliation, franchise and/or management agreements
- (7) Probate proceedings (until a disposition of the estate is complete)

Note: For more information on experience rating of employee leasing arrangements, joint ventures, and wrap-up projects, *refer to Rule 5.*

2. Impact of Ownership Changes

Ownership changes may result in a change in:

- a. Experience rating modification.
- b. Combinability status with other entities.
- c. Premium eligibility status—an entity may or may not qualify to be experience rated. *Refer to Rule 2-A for more information regarding premium eligibility.*
- d. Anniversary rating date
- e. Rating effective date

Refer to the User's Guide for examples.

D. COMBINATION OF ENTITIES

1. The combination of two or more entities requires common majority ownership. Combination requires:

- a. The same person, group of persons or corporation owns more than 50% of each entity, or
- b. An entity owns a majority interest in another entity, which in turn owns a majority interest in another entity. All entities are combinable for experience rating purposes regardless of the number of entities involved.

Refer to the User's Guide for examples.

2. Determination of majority ownership interest is based on the following:

- a. Majority of issued voting stock.
- b. Majority of the owners, partners or 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.
- e. Ownership interest held by an entity as a fiduciary. Such an entity's total ownership interest will 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.

Refer to the User's Guide for examples.

CURRENT

- 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, 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.
- 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:
 - (1) The 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.

PROPOSED

- 3. Multiple Combinations**
- a. More than one combination of entities may be possible within a group of entities. The selection of combinations is based on the combination that involves the most entities.
 - b. If Rule 3-D-3-a does not result in a single group with a majority of entities, the combination will be based on the group that has the largest amount of estimated standard premium. The estimated standard premium is based on the policies in effect at the time of the combination.
 - c. The experience of any entity may be used in only one combination.
- Refer to the **User's Guide** for examples.*
- E. TREATMENT OF EXPERIENCE**
- 1. Transfer of Experience**
 Changes in ownership or combination status may or may not result in revisions of experience rating modifications. The rating organization may issue, retract and/or revise the current and up to two preceding modifications due to ownership or combination status changes. The rating organization will request separate data from the carrier when appropriate. In certain cases, documentation may be needed to validate the accuracy of the submitted data.
 The experience for any entity undergoing a change in ownership will be retained or transferred to the experience ratings of the acquiring, surviving or new entity unless specifically excluded by this Plan.

Transfer of Experience Table 1

If the single or multiple entity risk disposes of all of its operations and the purchaser ...	Then...
Does not have any prior or current policies or experience	The experience will be retained in the future experience ratings of the purchaser, subject to <i>Rule 2-A</i> .
<ul style="list-style-type: none"> • Has prior experience, for which an experience rating modification has already been issued, or • Has prior experience, but did not qualify for experience rating 	The experience will be retained in the future experience ratings of the purchaser and combined with the other experience of the purchaser, subject to <i>Rule 2-A</i> .

COMMENT: Due to the size of the Transfer of Experience Table 2, it is presented in its entirety on the next page.

CURRENT

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

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

Transfer of Experience Table 2

If the single or multiple entity risk ...	And the purchaser...	Then...
<ul style="list-style-type: none"> • Disposes of part of its operations, and • Otherwise continues to operate its business, and • Its statistical data has been combined on a single policy, and • The insurance provider can furnish the rating organization with the appropriate experience to provide for transfer of the data to the purchaser 	<ul style="list-style-type: none"> • Does not have any experience 	<ul style="list-style-type: none"> • The appropriate experience will be retained in the future experience ratings of the purchaser, subject to <i>Rule 2-A</i>. • The same experience will be excluded from the future experience ratings of the seller. • If the separated experience results in the seller, purchaser, or both, not qualifying for experience rating, a unity factor (1.00) will apply to the non-qualifying risk until qualifying experience is developed.
	<ul style="list-style-type: none"> • Has experience but does not qualify for experience rating, or • Is an experience rated risk 	<ul style="list-style-type: none"> • The appropriate experience will be retained in the future experience ratings of the purchaser and combined with the other experience of the purchaser, subject to <i>Rule 2-A</i>. • The same experience will be excluded from the future experience ratings of the seller. • If the separated experience results in the seller, purchaser, or both, not qualifying for experience rating, a unity factor (1.00) will apply to the non-qualifying risk until qualifying experience is developed.
<ul style="list-style-type: none"> • Disposes of part of its operations, and • Otherwise continues to operate its business, and • Its statistical data has been combined on a single policy, and • The insurance provider cannot furnish the rating organization with the appropriate experience to provide for transfer of the data to the purchaser. 	<ul style="list-style-type: none"> • Does not have any experience, or • Has experience but does not qualify for experience rating 	<ul style="list-style-type: none"> • A unity factor (1.00) will apply to the purchaser's policy until qualifying experience is developed. • All experience developed prior to the sale remains in future ratings of the seller.
	<ul style="list-style-type: none"> • Is an experience rated risk 	<ul style="list-style-type: none"> • The purchaser's experience rating modification will continue to apply. Any experience developed by the purchased entity after the sale will be used in future ratings of the purchaser. • All experience developed prior to the sale remains in future ratings of the seller.

2. Exclusion of Experience

Rare circumstances may require that experience for any entity undergoing a change in ownership be excluded from future experience ratings. The experience will be excluded only if the rating organization confirms all of the following:

- a. The change must be a material change such that:
 - (1) The entire ownership interest **after** the change had no ownership interest **before** the change, or
 - (2) The collective ownership of all those having interest in an entity results in either less than:
 - 1/3 ownership **before** the change, or
 - 1/2 ownership **after** the change; and
- b. The material change in ownership is accompanied by a change in operations sufficient to result in reclassification of the governing classification; and

CURRENT

PROPOSED

c. The material change in ownership is accompanied by a change in the process and hazard of the operations. Change in process and hazard is determined by the rating organization. Refer to the **User's Guide** for examples.

Except for action that may be taken under Rule 3-F, experience is not otherwise excluded for employee leasing companies and temporary employment agencies. For more information on employee leasing companies, refer to Rule 5-A.

3. Recalculation and Application of Experience Rating Modifications

a. If a change in ownership and/or combinability status occurs, recalculation of experience rating modifications may be required, as described in the table below. Changes in ownership and/or combinability status may also result in a change in rating effective date, as determined by the rating organization.

If the first written reporting of the change by either the acquiring entity or acquired entity to their carrier or the rating organization occurs...	Then the recalculation and application of the revised experience rating modification(s) will be as of the...
Within 90 days of the date of the change	Date of the change
More than 90 days after the date of the change	Next rating effective date following the earliest notice of the change received by a carrier or the rating organization

b. Recalculation and application of experience rating modifications in conjunction with this rule is subject to Rules 3-F and 4-E.

F. EVASION OF EXPERIENCE RATING MODIFICATION

1. Actions

Some employers may take actions for the purpose of avoiding an experience rating modification. Other employers may take actions for otherwise legitimate business reasons that nonetheless result in the improper application of an experience rating modification. Regardless of intent, any action that results in the miscalculation or misapplication of an experience rating modification determined in accordance with this Plan is prohibited. These actions include, but are not limited to:

- Failure to report changes in ownership according to Endorsement WC 00 04 14
- A change in ownership
- A change in combinability status
- Creation of a new entity
- Transfer of operations from one entity to another entity that is not combinable according to Rule 3-D
- Misrepresentation on audits or failure to cooperate with an audit

2. Rating Organization Response

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. This includes, but is not limited to the:

CURRENT

PROPOSED

D. JOINT VENTURES

1. Two or more contractors, not combinable for experience rating under the rules of this Plan, may associate for the purpose of undertaking one or more projects as a joint venture. To qualify for experience rating as a joint venture, the following conditions must be met:
 - a. The contracts shall be awarded in the name of the associated contractors as a joint venture.
 - b. The joint venturers shall share responsibility for, and participate in, the control, direction and supervision of all work undertaken.
 - c. The joint venturers shall maintain a common bank account, payroll and business records.
2. Once the above qualifications are met, the premium for all operations subject to the joint venture shall be subject to an experience modification applied as follows:
 - a. As of the effective date of the initial policy covering the joint venture, an experience modification shall be applied for a period of twelve months. This will be an arithmetical average of the modifications of the individual contractors. In calculating this average, a modification of 1.00 (unity) is used for any contractor not subject to experience rating.
 - b. Renewal modifications shall be applied in the same manner as described in a. above, until such time as the joint venture qualifies to be experience rated based on its own experience.
 - c. Future experience ratings shall be based exclusively on the experience of the joint venture.

Note: Experience ratings of the individual contractor shall exclude all experience developed as a joint venture.

- Combination of experience that would otherwise not be combinable according to Rules 3-D and 3-E-1
- Separation of experience that would otherwise be combinable according to Rules 3-D and 3-E-1
- Exclusion of experience that would otherwise be included according to Rule 3-E-1
- Continuation of experience that would otherwise be excluded according to Rules 3-E-1 and 3-E-2
- Issuance of experience rating modifications that were not originally issued
- Revision and/or retraction of experience rating modifications

RULE 5—SPECIAL RATING CONDITIONS

D. CONSTRUCTION/CONTRACTING RISKS

2. Joint Ventures

Two or more contractors, not combinable for experience rating under the rules of this Plan, may associate for the purpose of undertaking one or more projects as a joint venture.

A joint venture may qualify for its own experience rating provided all of the following conditions are met:

- The contract(s) for the participating entities is awarded in the name of the joint venture; and
- The participating entities share the control, direction, and supervision of all work undertaken; and
- The participating entities maintain a common bank account, payroll, and business records.
- The experience of the joint venture participants is excluded from their individual experience rating modifications.

Experience Rating Modification Determination

A joint venture . . .	The experience rating modification is calculated . . .
Will not qualify for its own modification in the first year or two year(s) of operation(s)	By the carrier using: <ul style="list-style-type: none"> • An arithmetic average of the experience rating modifications of the participating entities. • A unity (1.00) factor for a participating entity that does not have its own modification.
May qualify for its own modification in the third and subsequent year(s) of operation(s)	By the rating organization using the experience developed by the joint venture.

CURRENT

E. APPLICATION OF EXPERIENCE MODIFICATION

1. FOR SINGLE POLICY RISKS

- a. The experience modification effective on the normal anniversary rating date shall apply for the full term of:
 - (1) The policy commencing on that date, or
 - (2) Any other policy commencing up to three months after that date.

For example, an experience modification effective 7-1-84 will apply to the policy effective 7-1-84 or to any policy with an effective date up to 10-1-84. No experience modification shall apply for a period longer than 15 months.

- b. If a policy commences **more than** three months after the normal anniversary rating date, the following procedure shall apply:
 - (1) The current experience modification shall apply to the new policy until the date the modification expires.
 - (2) A renewal experience modification shall apply to the new policy until the date the policy expires.
 - (3) A renewal experience modification shall apply annually thereafter as of the new normal anniversary rating date. This will be the date twelve months after the effective date of the new policy.

2. FOR MULTIPLE POLICY RISKS

If a risk is covered by two or more policies with varying effective dates, the following procedure shall apply:

- a. On a normal anniversary rating date established by the rating organization, an experience modification shall be issued to be effective for twelve months. This modification shall apply to the portion of each policy falling within that twelve-month period, regardless of their effective and termination dates.

PROPOSED

RULE 4—APPLICATION AND REVISION OF EXPERIENCE RATING MODIFICATIONS

D. APPLICATION FOR SINGLE AND MULTIPLE POLICY RISKS

The rating effective date and the anniversary rating date (ARD) determine the application of an experience rating modification. The rating effective date is determined according to Rule 2-B-2 of this Plan. The ARD is determined according to the *Basic Manual*. An experience rating modification will apply for:

- No less than three months, except for those impacted by changes in ownership and combinability status according to Rule 3
- No more than 15 months

1. For Single Policy Risks

- a. The experience rating modification effective on the anniversary rating date applies for the full term of:
 - (1) The policy beginning on that date, or
 - (2) Any other policy beginning up to three months after that date.
- b. If a policy beginning **more than** three months after the anniversary rating date, the following procedure applies:
 - (1) The current experience rating modification applies to the new policy until the date the modification expires.
 - (2) A renewal experience rating modification applies to the new policy until the date the policy expires.
 - (3) A renewal experience rating modification applies annually thereafter as of the new anniversary rating date. This will be the date 12 months after the effective date of the new policy.

2. For Multiple Policy Risks

If a risk is covered by two or more policies with varying effective dates, the following procedure applies:

- a. An experience rating modification is issued to be effective for 12 months. This modification applies to the portion of each policy falling within that 12-month period, regardless of the policy's effective and expiration dates.
- b. A renewal experience rating modification applies to each policy as described in a.
- c. The rating organization will review the effective dates of the multiple policies and may authorize the application of an experience rating modification for a period of other than 12 months.

CURRENT

- b. A renewal experience modification shall apply to each policy as described in a. above.
- c. In order to establish a new normal anniversary rating date, the rating organization shall review the effective dates of the multiple policies and may authorize the application of an experience modification for a period of other than twelve months. However, no experience modification shall apply for a period of less than three months or more than fifteen months.

3. RECALCULATION OF EXPERIENCE MODIFICATION

When a classification assigned to a risk is revised other than as a result of a change in risk operations, the experience modification shall be recalculated by the rating organization. This shall be done by reassigning the past payrolls to the revised classification.

4. PRELIMINARY MODIFICATIONS

The following procedure shall apply when revised rates, to be effective on or before the rating date, are not yet approved for any state:

- a. A preliminary experience modification will be calculated and issued by the rating organization using the current rates. This preliminary modification shall be applied to the policy until
- b. The experience modification is recalculated and issued by the rating organization using the authorized rating values. This experience modification shall be applied to the policy.

PROPOSED

RULE 4—APPLICATION AND REVISION OF EXPERIENCE RATING MODIFICATIONS

B. INCLUSION OF PAYROLL AND LOSSES

3. Corrections in Classifications

- a. A risk's classification(s) may be corrected in accordance with the *Basic Manual*. When a classification assigned to a risk is revised other than as a result of a change in risk operations, the experience rating modification may be recalculated by the rating organization. The purpose of such recalculation is to produce an experience rating modification factor using rating values that correspond to the rates charged on a policy.
- b. In such circumstances, the rating organization will act to ensure the proper calculation and application of experience rating modifications. This includes, but is not limited to:
 - Reassigning past payroll to the appropriate classification code and rating values
 - Using correction reports submitted in accordance with the *Statistical Plan*
 - Reviewing the information submitted regarding each change and determining the impact, if any, on the experience rating modification(s) of the entities involved
 - Requesting additional information, if necessary, due to the complexity of certain corrections
- c. The rating organization will not revise a modification if the change in classification is a result of:
 - A change in risk operations
 - A filed and approved change to the classification system

C. TYPES OF EXPERIENCE RATING MODIFICATIONS

1. Preliminary Modifications

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 final experience rating modification is determined.

2. Final Modifications

When a rate filing is approved in a state, the experience rating modification will be recalculated using the new rating values, and will become final. An experience rating modification may also be released originally as a final modification if there were no pending rate filings at the time the modification was released

CURRENT

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

PROPOSED

RULE 4—APPLICATION AND REVISION OF EXPERIENCE RATING MODIFICATIONS

C. TYPES OF EXPERIENCE RATING MODIFICATIONS

3. Contingent Modifications

a. Explanation

- (1) A contingent modification is one that is missing some data, but still meets the minimum data requirement displayed in the Minimum Data Requirements Table.
- (2) Contingent modifications for interstate risks must attain the minimum data requirements for each state meeting the intrastate premium eligibility levels.
- (3) If an intrastate or interstate risk does not attain the minimum amount of data required, a modification will not be issued. In such cases, a unity (1.00) factor applies.

b. Minimum Data Requirements

The following table provides the minimum data requirements for all experience periods possible under this Plan. Refer to Rule 2-E-1 for more information on experience period.

Minimum Data Requirements Table

Experience Period	Number of Months of 1 st Report Unit Statistical Data	Experience Period	Number of Months of 1 st Report Unit Statistical Data
Less than 12	All Data	35	23
12 –24	12	36	24
25	13	37	25
26	14	38	26
27	15	39	27
28	16	40	28
29	17	41	29
30	18	42	30
31	19	43	31
32	20	44	32
33	21	45	33
34	22		

c. Exceptions to Minimum Data Requirements

Experience rating modifications will be issued and will not be labeled contingent when the rating organization determines that a:

- (1) Risk has had a lapse in coverage.
- (2) Non-affiliate insurer had covered the risk.
- (3) Insurance provider is insolvent and not expected to report unit statistical data.

d. Submission of Missing Data

When the missing data is submitted according to the **Statistical Plan**, the rating organization will revise the current modification, and if applicable, up to two preceding modifications.

e. Application

A contingent modification applies until another experience rating modification is issued by the rating organization with the same effective date, subject to Rule 4-E.

CURRENT

6. CHANGES IN EXPERIENCE MODIFICATIONS

- a. Changes in experience modifications which result in a decrease in the modification, whether 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 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 modification 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 modifications resulting from:
 - (1) Late issuance of an experience modification due to an employer who has failed to cooperate with audits or because of other faults attributable to the employer or agents of the employer.
 - (2) Retroactive reclassification of a risk.
 - (3) Changes in risk ownership.

PROPOSED

E. CHANGES IN EXPERIENCE RATING MODIFICATIONS

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

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"> • 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"> • At any time during the policy period, or • After expiration of policy 	<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 <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>

PROPOSED

RULE 5—SPECIAL RATING CONDITIONS

E. CONSTRUCTION/CONTRACTING RISKS

1. Wrap-Up Construction Project

A policy issued for an entity participating in a wrap-up construction project is subject to its own experience rating modification. This also applies to an experience rating modification for a policy issued for two or more entities that are combinable under the rules of this Plan. Payroll and loss experience developed for all such policies is used in future experience rating modifications of the participating entities. There is no experience rating modification for the wrap-up construction project as a unit. *Refer to the **Basic Manual** for more information on wrap-up construction projects.*

CURRENT

F. WRAP-UP CONSTRUCTION PROJECT

A policy issued for an entity participating in a wrap-up construction project shall be subject to its own experience modification. This also applies to an experience modification for a policy issued for two or more entities that are combinable under the rules of this plan. Payroll and loss experience developed for all such policies shall be used in future experience modifications of the participating entities. There shall be no experience modification for the wrap-up construction project as a unit.

CURRENT

PART FOUR

SPECIAL RULES FOR RISKS WITH MULTI-STATE OPERATIONS

GENERAL EXPLANATION

For risks operating on a multi-state (interstate) basis, the rules of the Plan apply, in addition to the special rules in Part Four.

1. ELIGIBILITY FOR THE PLAN

A risk is eligible for experience rating on a multi-state (interstate) basis when it meets the requirement for intrastate rating, and also develops experience during the experience period in one or more additional states where this Plan is effective.

Note: In cases where experience developed in one or more additional states is not yet included in the experience period, the intrastate experience modification shall apply.

2. EXPERIENCE MODIFICATION FORMULA

The experience modification for risks rated on a multi-state basis shall be determined by using the experience of all states included in the rating, tabulated separately by state.

3. EXPLANATION OF TERMS

a. WEIGHTING VALUE

Each state's Weighting Value shall be determined based on the total expected losses of the risk. Use the Table of Weighting and Ballast Values for each state.

An average Weighting Value for the risk is determined by the following procedure:

- (1) Multiply each state's Weighting Value by the state's expected losses.
- (2) Add the product for all states in (1).
- (3) Divide the total in (2) by the risk's total expected losses.

b. BALLAST VALUE

An average Ballast Value for the risk is determined by the following formula:

- (1) Multiply each state's Ballast Value by the state's expected losses.
- (2) Add the product for all states in (1).
- (3) Divide the total in (2) by the risk's total expected losses.

PROPOSED

RULE 2—EXPERIENCE RATING ELEMENTS AND FORMULA

A. PREMIUM ELIGIBILITY

5. Interstate Experience Rating

- a. A risk qualifies for experience rating on an interstate (multi-state) basis when it:
 - (1) Meets the premium requirement for intrastate rating in any one state, and
 - (2) Develops experience during the experience period in one or more additional states where this Plan applies or where the independent rating organization Plan permits combination for interstate rating.
- b. The experience developed in each additional state does not have to meet the premium requirement for intrastate rating.
- c. The interstate modification applies to all of the risk's operations even if coverage is written under separate policies.
- d. If a risk expands operations into one or more additional states, its experience rating modification applies to the additional state(s) operations as of the date of expansion. Experience for such operations will be included in the calculation of future modifications.
- e. If a risk is intrastate rated in an independent bureau state that participates in the interstate experience rating plan, Rule 2-A-5-a. through d. applies.

Refer to the User's Guide for examples.

COMMENT: Part Four, item 2 is addressed within each description of the calculation on both an interstate and intrastate basis. There is no longer an interstate only portion of the Plan.

RULE 2—EXPERIENCE RATING ELEMENTS AND FORMULA

C. ELEMENTS OF EXPERIENCE RATING FORMULA AND WORKSHEET

9. Weighting Value

The Weighting Value is a factor that is applied to a risk's actual excess losses and the expected excess losses. The result is rounded to the nearest whole number. The weighting value determines how much of the actual excess losses and expected excess losses are used in an experience rating. The weighting value increases as expected losses increase.

The Tables of Weighting Values are contained in the state pages of this Plan. Each state's weighting value is based on the total expected losses of the risk.

An interstate risk's weighting value is an average, determined as follows:

- a. Multiply each state's weighting value by the state's expected losses.
- b. Total the results from all states in a.
- c. Divide the total in b. by the risk's total expected losses.
- d. Round the result of c. to two decimal places.

10. Ballast Value

The Ballast Value is a stabilizing element designed to limit the effect of any single loss on the experience rating modification. It is added to both the actual primary losses and expected primary losses. The ballast value increases as expected losses increase.

These values may be obtained from the Tables of Ballast Values in this Plan. Each state's ballast value is based on the total expected losses of the risk.

An interstate risk's ballast value is an average, determined as follows:

- a. Multiply each state's ballast value by the state's expected losses.
- b. Add the product for all states in a.
- c. Divide the total in b. by the risk's total expected losses.
- d. Round the result of c. to the nearest whole number.

CURRENT

4. SEPARATE STATE EXPERIENCE MODIFICATION

Carriers licensed to write workers compensation insurance in only one state are permitted, with the agreement of the insured, to request that a separate experience modification be issued for such state. Such requests must be made in writing to the appropriate rating organization, prior to the rating date.

Any modification issued for a single state shall apply for the full rating period, regardless of whether the insurance is provided by the requesting or other carrier.

The following calculation procedure shall apply:

- a. Calculate on an interstate basis a modification for the entire risk.
- b. Calculate on an intrastate basis a modification for the state for which a separate modification has been requested.
- c. Calculate on an interstate basis a modification for all states other than the single state.
- d. Calculate the ratio of the product of the modification from (a) and the risk total expected losses to the sum of the products of the modification from (b) and (c) and the corresponding expected losses.
- e. The final modification for the single state shall be the product of its modification as determined in (b) and the ratio determined in (d).
- f. The final modification for all other states shall be the product of the modification determined in (c) and the ratio determined in (d).

PROPOSED

RULE 5—SPECIAL RATING CONDITIONS

C. SEPARATE STATE EXPERIENCE RATING MODIFICATION

1. Explanation

A separate experience rating modification for a single state in an interstate rated risk may be calculated. The single state experience rating modification is calculated using a weighted average, which is based on the risk's total expected losses in all states included in the experience rating modification and its expected losses in the separate state.

2. Permitted as Follows:

- a. The risk must be interstate rated.
- b. The risk must qualify for an intrastate rating in the state where the separate state experience rating modification is requested.
- c. The risk must qualify for an intrastate rating in at least one other state.
- d. The request for a separate state experience rating modification must be:
 - From a carrier only licensed to write workers compensation insurance in the state for which the separate state modification is requested.
 - In writing and subject to the agreement of the insured.
 - Received by the rating organization prior to the rating effective date.
- e. The experience rating modifications determined by steps A-C of Rule 5-C-4 are calculated using the experience rating modification formula and the cap on modifications.

3. Application

- a. Any experience rating modification calculated under this rule applies for the full rating period, regardless of whether the insurance is provided by the requesting carrier or another carrier.
- b. The separate state experience rating modification applies to all of a risk's operations in that state. The remaining interstate mod is applied to all other states.
- c. A risk may qualify for a separate state experience rating modification in more than one state. Under this circumstance, the completed modification for each qualifying state is that state's separate state experience rating modification.

4. Determination of the Separate State Experience Rating Modification

Follow the step-by-step procedure to calculate the separate state experience rating modification.

Step A—Calculate, on an interstate basis, a modification for the entire risk.

Step B—Calculate, on an intrastate basis, a modification for the state for which a separate modification has been requested.

Step C—Calculate, on an interstate basis, a modification for all states excluding the state for which a separate modification has been requested.

Step D—Calculate the following (using the results in Steps A, B, and C):

$$\frac{\text{Result of Step A} \times \text{Total Expected Losses in All States}}{(\text{Result of Step B} \times \text{Expected Losses in Separate State}) + (\text{Result of Step C} \times \text{Expected Losses in All Other States})}$$

Step E—Calculate the completed separate state experience rating modification by multiplying the result in Step B by the result in Step D.

Step F—Calculate the completed experience rating modification for all other states by multiplying the result in Step C by the result in Step D.

Refer to the User's Guide for an example.

PROPOSED

COMMENT: Part Four, item 5 is no longer needed as a national rule. It will be included as a state specific rule for those few states that carriers have the ability to file separate rating values.

COMMENT: Part Four, item 5 is addressed within proposed Rule 4-C-3 on both an interstate and intrastate basis. There is no longer an interstate only portion of the Plan.

CURRENT

5. SEPARATE STATE OR INTERSTATE EXPERIENCE MODIFICATIONS

In jurisdictions where a carrier is permitted to file and has filed its own rating values, an additional experience modification shall be calculated using the applicable carrier rating values. The resulting modification is to be applied only by the carrier whose values were used in the calculation and only in the state or states where their rating values apply. The experience used to calculate the modifications shall be identical.

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 statistical experience for each state meeting the intrastate eligibility level shall be used.