R.C. 2334

To: The Members of the Board


The New York State Department of Financial Services has approved revisions to the Workers Compensation Experience Rating Plan with an effective date of October 1, 2013. The purpose of these revisions is to improve the Plan’s optimal performance, as well as to bring several plan parameters to national standards.

The first change revises the split point, used to distinguish between primary and excess losses in the calculation of experience modification factors, from $5,000 to $10,000. This change is expected to improve the performance of the plan, by increasing the credibility given to the actual experience of employers when determining their modification factor.

The second change revises the formula to determine the maximum modification debit factor. The revised formula is

\[
\text{Maximum Mod} = (1.10 + 0.0004 \times \frac{E}{G})
\]

where \( E \) represents the employer’s expected losses and \( G \) is the State Reference Point.

This latter change is expected to affect a relatively small number of employers and results in negligible overall impact.

The proposed changes are consistent with the changes made by the National Council on Compensation Insurance (NCCI) which have been filed and approved in a number of jurisdictions.

Revisions to Rule 2 of New York’s Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance (“Experience Rating Elements and Formula”), as well as to the Supplement and Example Section of the Manual, are attached to this bulletin.

Very truly yours,

Monte Almer

President
5. **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 each claim in excess of $10,000. It is against the benchmark that individual employers are compared, based on their actual excess losses.

6. **Actual Incurred Losses**
   For purposes of experience rating, Actual Incurred Losses are those reported according to the Statistical Plan. Incurred losses include both paid amounts and carrier established reserves on each claim.

7. **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 $10,000 is considered primary in New York.

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.

9. **Weighting (W) Value**
   The Weighting Value is a factor that is applied to a risk’s actual excess losses, with the complement of the W value (1.00 – W) applied to the expected excess losses. The weighting value determines how much of actual excess losses and expected excess losses are used in an experience rating. The weighting value is based on the total expected losses of the risk and increases as expected losses increase. These values may be obtained from the Table of Weighting Values in this Plan.

10. **Ballast (B) 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 is based on the total expected losses of the risk and increases as expected losses increase. These values may be obtained from the Table of Ballast Values in this Plan.

11. **Stabilizing Value**
    The Stabilizing Value is a term used to describe the combined effect of the weighting and ballast values on the experience modification and is determined as follows:

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

    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 complement of the weighting value (1.00-W) 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 $10,000, only that portion of the loss amount above $10,000 (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 in the experience rating formula.

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

   To reduce the effect of unusual or catastrophic occurrences on the experience modification, losses are limited to per claim, or multiple claim, limitations that can be found in the Table of Weighting Values.

a. **Single and Multiple Claim Limitation**

   **Basic Loss Limitation Table**

<table>
<thead>
<tr>
<th>If...</th>
<th>Then...</th>
</tr>
</thead>
<tbody>
<tr>
<td>An accident involves only one person, or is an employers liability only loss</td>
<td>• The loss is subject to per claim accident limitation</td>
</tr>
<tr>
<td></td>
<td>• The actual primary loss is subject to the maximum primary value of $10,000, even if the loss does not exceed the per claim accident limitation</td>
</tr>
</tbody>
</table>

   **Loss Limitations for Accidents Involving Two or More Persons - Table 1**

<table>
<thead>
<tr>
<th>If an accident involves two or more persons, and...</th>
<th>Then...</th>
</tr>
</thead>
<tbody>
<tr>
<td>The total of the losses exceeds the multiple claim accident limitation</td>
<td>• The total losses are subject to the multiple claim accident limitation</td>
</tr>
<tr>
<td></td>
<td>• The actual primary loss for these accidents is limited to a total of $20,000</td>
</tr>
<tr>
<td>The total of the losses does not exceed the multiple claim accident limitation, and none of the individual losses within the total exceeds the per claim accident</td>
<td>• The individual losses are used at full value</td>
</tr>
<tr>
<td></td>
<td>• The total actual primary losses for the accident are limited to $20,000</td>
</tr>
</tbody>
</table>

   **Loss Limitations for Accidents Involving Two or More Persons - Table 2**

<table>
<thead>
<tr>
<th>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 per claim accident limitation, and...</th>
<th>Then, the individual loss is limited to the per claim accident limitation and...</th>
</tr>
</thead>
<tbody>
<tr>
<td>The total of the remaining losses exceeds $10,000</td>
<td>• The remainder of the losses are used at full value</td>
</tr>
<tr>
<td></td>
<td>• The total actual primary losses for the accident are limited to $20,000</td>
</tr>
<tr>
<td>The total of the remaining losses does not exceed $10,000</td>
<td>• The remainder of the losses are used at full value</td>
</tr>
<tr>
<td></td>
<td>• The actual primary loss is limited to $10,000 for the individually limited loss</td>
</tr>
<tr>
<td></td>
<td>• No actual primary loss limitation applies for the remainder of the losses</td>
</tr>
</tbody>
</table>
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.

i. To apply the disease loss policy limitation:

a. Determine if a risk’s individual policy total limited and non-limited 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 $20,000, plus 40% of the risk’s total expected primary losses for the experience period, rounded to the nearest whole number.

ii. A policy’s total disease losses may not meet the risk-specific policy limitation amount as determined in (1)(a) above, but exceed the limitation shown in (1)(b). In such circumstances, Rule 2-C-13-a applies.

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

<table>
<thead>
<tr>
<th>To determine the…</th>
<th>Combine the disease losses of all policies within the experience period having an effective date…</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most recent policy year</td>
<td>Within 24 months prior to the rating effective date</td>
</tr>
<tr>
<td>Middle policy year</td>
<td>More than 24 months but not exceeding 36 months prior to the rating effective date</td>
</tr>
<tr>
<td>Oldest policy year</td>
<td>More than 36 months prior to the rating effective date</td>
</tr>
</tbody>
</table>

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.

\[
\text{Primary} + \frac{\text{Ratable Excess}}{\text{Actual Excess Losses}} + \frac{\text{Stabilizing Value}}{(1 \text{ Minus Weighting Value})} = \text{Totals}
\]

For the experience modification factor, divide Total A by Total B; round to two decimal places.
D. LOSS LIMITATIONS

1. Loss Limitation for Single Claims—Examples for Rule 2-C-13-a
   a. 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 New York’s state per claim accident limit is $245,000. A claim of $285,000 is reported at that amount and appears at 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 $245,000. This limitation applies for all claims that exceed $245,000.

   b. State Per Claim Accident Limitation
      Company A has three claims from three separate accidents:

      | Loss | Actual Incurred | Actual Incurred Limited | Actual Primary |
      |------|----------------|------------------------|---------------|
      | 1    | $275,000       | $245,000               | $10,000       |
      | 2    | $12,000        | $12,000                | $10,000       |
      | 3    | $5,000         | $5,000                 | $5,000        |
      | Total| $292,000       | $262,000               | $25,000       |

      Because Loss 1 exceeds the limit, it is reduced to that amount. Both Losses 2 and 3 are used at full value.
      ★ The primary loss for Losses 1 and 2 are $10,000 each and $5,000 for Loss 3.

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 $245,000, the multiple claim limitation would be $490,000. The multiple claim limitation is another layer of protection that the Plan provides. It ensures that the impact of 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 $250,000, $327,000, $85,000 and $60,000, totaling $722,000.

      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 $722,000 in claims to $490,000. In addition, the actual primary loss is limited to $20,000 for the four claims, rather than the $40,000 ($10,000 each) that would normally apply for each of the four claims.

   b. Assume Company B has four claims resulting from a single accident:

      | Loss | Actual Incurred | Actual Incurred Limited | Actual Primary |
      |------|----------------|------------------------|---------------|
      | 1    | $525,000       | Multiple Claim Limit    | Actual Primary Limit |
      | 2    | $221,000       |                        |               |
      | 3    | $145,000       |                        |               |
      | 4    | $50,000        |                        |               |
      | Total| $941,000       | $490,000               | $20,000       |

      The multiple claim limitation reduced the amount of the actual incurred losses used in the experience rating calculation by $451,000 and the actual primary losses by $20,000.
c. As a comparison, if each loss in b. above was a result of four separate accidents, the losses would be limited individually and used in the calculation as follows:

<table>
<thead>
<tr>
<th>Loss</th>
<th>Actual Incurred</th>
<th>Limited Actual Incurred</th>
<th>Actual Primary</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$525,000</td>
<td>$245,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>2</td>
<td>$221,000</td>
<td>$221,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>3</td>
<td>$145,000</td>
<td>$145,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>4</td>
<td>$50,000</td>
<td>$50,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>Total</td>
<td>$941,000</td>
<td>$661,000</td>
<td>$40,000</td>
</tr>
</tbody>
</table>

The limitation of just one loss exceeding the single per claim amount of $245,000 results in $661,000 in actual incurred losses and $40,000 in actual primary losses being used in the experience rating calculation.

d. Loss limitations in experience rating also apply when the coverage is provided by the United States Longshore and Harbor Workers’ Act. These limitations are higher than those of New York because the federal benefits under the Act are significantly higher than the workers compensation benefits in New York. The application of the federal loss limitations works in the same manner as those described above.

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

Assume for the following examples, 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 is $50,000
- Total expected primary losses of $25,000

(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 $10,000.

(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 incurred disease losses are limited as follows:

- \( $20,000 + 40\% \text{ of the risk’s total expected primary losses} = \)
- \( $20,000 + ($25,000 \times 40\%) = \)
- \( $20,000 + $10,000 = $30,000 \)

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 $30,000 is not met because of $10,000 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
- $10,000 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 $20,000.

<table>
<thead>
<tr>
<th>Loss</th>
<th>Actual Incurred</th>
<th>Actual Incurred Limited</th>
<th>Actual Primary</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$175,000</td>
<td>Multiple Claim Limit</td>
<td>Actual Primary Limit</td>
</tr>
<tr>
<td>2</td>
<td>$25,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>$40,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$240,000</td>
<td>$200,000</td>
<td>$20,000</td>
</tr>
</tbody>
</table>

(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:

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

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

- \(\$20,000 + 40\% \text{ of the risk’s total expected primary losses} =\)
- \(\$20,000 + ($100,000 \times 40\%) =\)
- \(\$20,000 + $40,000 = $60,000\)

By the nature of the first layer of protection, XYZ company’s disease losses of $240,000 do not exceed the policy actual incurred loss disease limitation of $840,000. Also, under XYZ Company’s policy, the actual primary disease loss limitation of $60,000 is not met because of the $20,000 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
- $20,000 actual primary loss

2. 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 $20,000. 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 $10,000 each. If they were each treated individually, the total actual primary loss would be $25,000.
(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:
- $20,000 + 40\% \text{ of the risk’s total expected primary losses} =\)
- $20,000 + ($45,000 \times 40\%) =\)
- $20,000 + $18,000 = $38,000

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 $38,000 is not met because of the $20,000 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
- $20,000 actual primary loss