

LCB File No. R068-98

**STATE INDUSTRIAL INSURANCE SYSTEM
and
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE**

NOTICE OF PUBLIC WORKSHOPS AND HEARINGS

AND REQUEST FOR COMMENTS REGARDING

REGULATIONS TO BE SUNSET, AMENDED AND/OR TRANSFERRED

The Chief Executive Officer of the State Industrial Insurance System ("SIIS") and the Commissioner of the Division of Insurance ("DOI") will hold a joint public workshop and hearing pursuant to NRS 616B.170 and NRS 616B.540, respectively, for the purpose of sun setting, amending and/or transferring certain SIIS regulations. Internal SIIS policies will replace sunset regulations. The following regulations will be sunset, amended or transferred from SIIS to DOI effective July 1, 1999.

**Thursday, May 28, 1998
9:30 a.m. to 12:30 p.m.**

Carson City Department of Transportation
1263 S. Stewart Street
Carson City, Nevada

Las Vegas Department of Transportation
123 E. Washington Street
Las Vegas, Nevada

Elko District Department of Transportation
1951 Idaho Street
Elko, Nevada

This hearing will be teleconferenced from the above locations.

NEED AND PURPOSE:

The purpose of the public workshop and hearing is to gather public comments, data, views and arguments to assist SIIS and DOI in drafting proposed regulations. Thereafter, proposed regulations for adoption shall be reviewed at the hearing to be held immediately following the workshop. Interested persons are hereby invited to attend and prepare written and/or oral comments and/or drafts of proposed regulations for consideration by SIIS and DOI in developing proposed regulations for (list in general the purpose of the regulations to be changed here).

Persons wishing to submit comments in written form may address the comments, data, views or arguments to Lenard T. Ormsby, General Counsel, State Industrial Insurance System, 515 East Musser Street, Carson City, Nevada 89714. Written comments may also be submitted for consideration at the workshop (and hearing?).

Any person with a disability as defined by the Americans with Disabilities Act who requires special assistance to participate in the workshop may contact, at least two (2) days prior to the meeting, Kathleen Swain, at the State Industrial Insurance System, 515 East Musser Street, Carson City, Nevada 89714, or by calling (702) 886-1066 to make a request for reasonable accommodations.

LOCATION OF COPIES OF WORKSHOP AND HEARING NOTICE:

A copy of this notice will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice will be available at the offices of the State Industrial Insurance System located at 515 E. Musser Street, 504 E. Musser Street and 1470 College Parkway, Carson City; 1700 West Charleston Boulevard, and 1210 South Valley View Boulevard, Las Vegas; 9790 Gateway Drive, Suite 100, Reno; and 850 Elm Street, Elko, and at the main public library in all counties in which an office of the agency is not maintained.

The text of each regulation will include the entire text of any section of the Nevada Administrative Code which is proposed for amendment or repeal. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

REGULATIONS TO BE SUNSET: These regulations are in conflict with the NCCI filing which has been adopted by the Commissioner of Insurance.

NAC 616A.110	"Expected losses" defined.
NAC 616A.150	"Incurred losses" defined.
NAC 616A.180	"Manual premium defined.
NAC 616A.200	"Payroll" defined.
NAC 616A.210	"Period of experience" defined.
NAC 616A.230	"Rate for expected losses" defined.
NAC 616A.240	"Rates in the manual" defined.
NAC 616A.250	"Risk" defined.
NAC 616A.260	"Standard premium" defined.
NAC 616A.290	Construction.
NAC 616A.320	Effective time of coverage.
NAC 616B.029	Report of change in ownership of business
NAC 616B.032	Delinquent payroll reports and related premium payments.

NAC 616B.040	Classification procedures: General requirements.
NAC 616B.043	Classification procedures: Inclusions, exclusions and standard exceptions.
NAC 616B.046	Classification procedures: Governing classifications.
NAC 616B.049	Classification procedures: Operations which include construction or erection work.
NAC 616B.052	Reclassification.
NAC 616B.060	Definitions.
NAC 616B.063	Scope.
NAC 616B.066	Eligibility.
NAC 616B.069	Applicability; limitation for modification of premium based on experience.
NAC 616B.072	Effect of rating experience of employer.
NAC 616B.075	Experience considered for modification of premium.
NAC 616B.078	Determination of ownership.
NAC 616B.081	Combination of entities; merger; consolidation.
NAC 616B.084	Effect of change in ownership; determining nature of change; identification of management.
NAC 616B.087	Standards to determine nature of change in ownership.
NAC 616B.090	Modification of premium based on experience of joint venture.
NAC 616B.093	Calculation of expected losses.
NAC 616B.096	Formula for modification of premium based on experience.
NAC 616B.099	Application of modification of premium based on experience.
NAC 616B.102	Limitation on losses considered by system.
NAC 616B.105	Revision of losses.
NAC 616B.108	Cases pending against third parties.
NAC 616B.111	Evasion of regulations; investigation and action by system; appeal.
NAC 616B.120	"Eligible employer" defined.
NAC 616B.123	Evaluation of experience and determination of experience modification factor of eligible employer; evaluation of experience of employee leasing company.
NAC 616B.126	Eligible employer to provide certain records to system upon establishing coverage with system; assignment of temporary experience modification factor to employer.
NAC 616B.129	Use by system of experience modification factor of employer who relocates from only one state; determination of composite experience modification factor of employer consolidating or expanding operations previously located in two or more states.
NAC 616B.132	Effective date of assigned experience modification factor; use of percentages of out-of-state and in-state experience to calculate employer's premium.
NAC 616B.140	Definitions.
NAC 616B.143	Identification of employer for participation in plan.
NAC 616B.146	Period of participation in plan.
NAC 616B.149	Reevaluation of identification of employer as having excessive

	losses; removal or required participation of employer in plan.
NAC 616B.152	Exemption of employer from plan.
NAC 616B.155	Penalties for failure to correct excessive losses.
NAC 616D.100	Appeal to manager concerning employer's account.
NAC 616D.110	Notice to manager.
NAC 616D.120	Service of notice; notice of representation.
NAC 616D.130	Materials to be filed and served before hearing; time for filing; effect of failure to comply with requirements for filing.
NAC 616D.140	Classification of parties.
NAC 616D.150	Continuances.
NAC 616D.160	Entry of appearance.
NAC 616D.170	Representation of parties; qualifications of attorneys.
NAC 616D.180	Hearing.
NAC 616D.190	Failure of party to appear.
NAC 616D.200	Rehearings.
NAC 616D.210	Record of hearing.

REGULATIONS TO BE AMENDED:

NAC 616A.120	"Fiscal year" defined.
NAC 616A.170	"Manual" defined.

REGULATION TO BE TRANSFERRED FROM SIIS TO DOI: This regulation contains no change in its substantive provisions, but is merely being transferred to the Department of Insurance.

NAC 616A.310	Computation of time.
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ESTIMATED ECONOMIC EFFECT OF THE REGULATION:

On Regulated Business: There will be no adverse, beneficial, immediate, or long-term effect on regulated business because the regulations being sunset are being replaced by NCCI provisions. The amendments to the regulations and the new regulations are to bring the regulations into compliance with the NCCI filing that has been adopted by the Insurance Commissioner.

On the General Public: There will be no adverse, beneficial, immediate, or long-term effect on the general public because the regulations being sunset are being replaced by NCCI provisions. The amendments to the regulations and the new regulations are to bring the regulations into compliance with the NCCI filing that has been adopted by the Insurance Commissioner.

ESTIMATED COST TO THE STATE INDUSTRIAL INSURANCE SYSTEM: The proposed regulatory changes are not anticipated to result in additional administrative costs to SIIS.

ESTIMATED COST TO THE DIVISION OF INSURANCE: It is estimated that the costs, if any, will be minimal.

OVERLAP OR DUPLICATION WITH OTHER REGULATIONS: SIIS and DOI are not aware of any overlap or duplication between the regulations being repealed and any other state, local or federal regulation.

NOTICE OF NEW OR INCREASED FEE: The changes to the above-identified regulations will result in no increased fees to regulated businesses or to the public.

Persons wishing to comment upon the proposed action of SIIS and DOI may appear at the scheduled public hearings or may address their comments, data, views, or arguments, in written form to:

Lenard T. Ormsby, General Counsel
State Industrial Insurance System
515 East Musser Street
Carson City, Nevada 89714

Written submissions must be received by SIIS on or before May 25, 1998.

CLARIFICATION OF REGULATIONS:

Persons seeking clarification of any of the terms of the regulations may, at any time, may address their inquiries to the General Counsel, State Industrial Insurance System, 515 East Musser Street, Carson City, Nevada 89714.

DATED this _____ day of April, 1998.

STATE INDUSTRIAL INSURANCE SYSTEM

By _____

DOUGLAS D. DIRKS
Chief Executive Officer
DEPARTMENT OF BUSINESS & INDUSTRY,
DIVISION OF INSURANCE

By _____

ALICE MOLASKY
Insurance Commissioner

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the STATE INDUSTRIAL INSURANCE SYSTEM and that on this date I deposited for mailing at Carson City, Nevada, first class postage fully prepaid, a true and correct copy of the within NOTICE OF PUBLIC WORKSHOP AND PUBLIC HEARING FOR COMMENTS REGARDING REGULATIONS TO BE SUNSET, AMENDED, AND/OR TRANSFERRED addressed to those individuals and businesses listed on Exhibit A attached hereto; those county libraries listed on Exhibit B attached hereto; and the following Nevada newspapers for publication:

Nevada Appeal
Legal Department
P. O. Box 2288
Carson City, Nevada 89702-2288

Elko Daily Free Press
Legal Department
3720 Idaho Street
Elko, Nevada 89801

Las Vegas Review-Journal
Legal Department
P. O. Box 70
Las Vegas, Nevada 89125

Las Vegas Sun
Legal Department
800 South Valley View
Las Vegas, Nevada 89107

Reno Gazette-Journal
Legal Department
P. O. Box 22000
Reno, Nevada 89520

DATED this ____ day of April, 1998.

SIGNATURE

LCB File No. R068-98
PROPOSED REGULATION OF THE DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE
REGULATIONS TO BE SUNSET EFFECTIVE 7/1/99

NAC 616A.110 "Expected losses" defined. *(Expires by limitation on July 1, 1999)*

"Expected losses" means the result of a calculation in which the employer's payroll is multiplied by the appropriate rate for expected losses.

[**Industrial Comm'n, No. 34.040, eff. 12-28-81; + No. 37.060, eff. 5-13-81**](NAC A by Industrial Insurance System, 10-26-83)-(Substituted in revision for NAC 616.024)

NAC 616A.150 "Incurred losses" defined. *(Expires by limitation on July 1, 1999)*

"Incurred losses" means actual losses paid, the reserve balance and the interest accruing after entry of judgment and expenses incurred in obtaining recovery against a third party, less any amount recovered from a third party.

[**Industrial Comm'n, No. 31.130, eff. 10-13-77; + No. 35.040, eff. 8-1-78; A 6-30-82; + part No. 38.060, eff. 8-21-81**](NAC A by Industrial Insurance System, 10-26-83; 6-27-85, eff. 7-1-85)-(Substituted in revision for NAC 616.034)

NAC 616A.180 "Manual premium" defined. *(Expires by limitation on July 1, 1999)*

"Manual premium" means a premium determined by multiplying the rates from the manual which are currently applicable to the employer by the total amount of the payroll he reported for the prior fiscal year.

(Added to NAC by Industrial Insurance System, eff. 4-20-84)-(Substituted in revision for NAC 616.041)

NAC 616A.200 "Payroll" defined. *(Expires by limitation on July 1, 1999)*

"Payroll" means, for the purpose of computing premiums for worker's compensation, the first \$36,000 paid by each employer to any one employee during a calendar year and includes, but is not limited to:

1. Salary.
2. Commissions.
3. Piecework.
4. Incentive pay.
5. Vacation pay.
6. Sick pay.
7. Holiday pay.
8. Wages.
9. Bonuses.
10. Overtime pay.
11. Termination pay.

12. Travel time pay which is compensation for time spent traveling.
13. Tips collected and disbursed by employers which were not paid at the discretion of the customer.
14. Tips not included in subsection 13 which the employee has reported pursuant to 26 U.S.C. ' 6053(a).
15. Tool allowance or rental, including vehicle rental or usage, where no accounting is required of the employee.
16. Reasonable market value of board, rent, housing, lodging or similar advantage received from an employer. The value for board and room must be reported at a minimum of \$150 monthly, \$5 daily or \$1.50 per meal and the value for a room alone at a minimum of \$50 per month.
17. Cafeteria plan benefits provided to the employee at the employee's option, in lieu of salary pursuant to section 125 of the Internal Revenue Code of 1986.
18. All deemed wages defined by provisions of chapters 616A to 617, inclusive, of NRS.
 [Industrial Comm'n, part No. 16.010, eff. 7-1-73; A 9-25-75; renumbered as part 8.010, 6-30-82]–(NAC A by Industrial Insurance System, 10-26-83; 6-27-85, eff. 7-1-85; 7-12-88; 3-5-92; 3-5-92, eff. 7-1-92)–(Substituted in revision for NAC 616.044)

Reviser's Note.

The regulation of the state industrial insurance system filed with the secretary of state on March 5, 1992, contains the following provision not included in NAC:

"For the purposes of NRS 616.400 [616B.224] and NAC 616.044 [616A.200], the maximum amount deemed to be paid annually to any one employee:

1. Until June 30, 1992, is \$24,000.
2. From July 1, 1992 to December 31, 1992, is the amount of payroll paid during this period, but not to exceed \$36,000 when combined with the payroll reported pursuant to subsection 1."

NAC 616A.210 "Period of experience" defined. *(Expires by limitation on July 1, 1999)*

"Period of experience" means:

1. The period during which payrolls, premiums and claims have been paid and which is considered by the system in calculating the dividend for a policyholder;
2. For the purposes of NAC 616B.063 to 616B.108, inclusive, a period of 3 years beginning 4 1/2 years before and ending 1 1/2 years before the date on which the modification of premium based on experience is to be effective;
3. For the purposes of NAC 616B.140, a period of 4 years beginning 5 1/2 years before and ending 1 1/2 years before the date on which the period of the plan for controlling excessive losses is to be effective; and
4. For the purposes of NAC 616B.286 to 616B.385, inclusive, the period of a policy.

[Industrial Comm'n, No. 34.080, eff. 12-28-81; + No. 37.090, eff. 5-13-81]–(NAC A by Industrial Insurance System, 10-26-83; 12-13-93; 8-16-94)–(Substituted in revision for NAC 616.045)

NAC 616A.230 "Rate for expected losses" defined. *(Expires by limitation on July 1, 1999)*

"Rate for expected losses" means a weighted average cost of claims incurred during the period of experience. The rate is expressed in dollars and cents per \$100 of payroll and is calculated for each group of classifications in the manual. The rate does not include any loading for administrative expense.

[Industrial Comm'n, No. 34.050, eff. 12-28-81; + No. 37.070, eff. 5-13-81]–(NAC A by Industrial Insurance System, 10-26-83)–(Substituted in revision for NAC 616.026)–(Substituted in revision for NAC 616.047)

NAC 616A.240 "Rates in the manual" defined. *(Expires by limitation on July 1, 1999)*

"Rates in the manual" means the premium rates adopted by the manager, subject to adjustment by the commissioner and listed in the manual.

(Added to NAC by Industrial Insurance System, eff. 10-26-83)–(Substituted in revision for NAC 616.0475)

NAC 616A.250 "Risk" defined. *(Expires by limitation on July 1, 1999)*

"Risk" means:

1. A single entity;
2. Two or more entities which qualify for combination under NAC 616B.081, whether or not insurance is provided by one or more policies issued by the system;
3. For the purpose of retrospective rating, a business or trade association and the participating employers; or
4. An employee leasing company and a client company that have entered into an agreement for leasing employees.

[Industrial Comm'n, No. 34.100, eff. 12-28-81; + No. 35.050, eff. 8-1-78; A 6-3-82]–(NAC A by Industrial Insurance System, 6-27-85, eff. 7-1-85; 8-16-94)–(Substituted in revision for NAC 616.052)

NAC 616A.260 "Standard premium" defined. *(Expires by limitation on July 1, 1999)*

"Standard premium" means a premium determined by multiplying the payroll for the risk by the appropriate rates in the manual and the applicable modification of premium based on experience. For those entities which qualify for combination under NAC 616B.081, the modification of premium based on the combined experience will be used to calculate the standard premium.

[Industrial Comm'n, No. 35.070, eff. 8-1-78; A 6-30-82; + No. 38.090, eff. 8-21-81]–(NAC A by Industrial Insurance System, 6-27-85, eff. 7-1-85)–(Substituted in revision for NAC 616.054)

NAC 616A.290 Construction. *(Expires by limitation on July 1, 1999)*

The provisions of chapters 616A to 616D, inclusive, of NAC must be liberally construed to secure a just, speedy and economical determination of all matters concerning workmen's compensation.

[Industrial Comm'n, No. 1.020, eff. 6-30-82]–(Substituted in revision for NAC 616.062)

NAC 616A.320 Effective time of coverage. *(Expires by limitation on July 1, 1999)*

1. The effective time of coverage for a new account or a reopened account which had previously been voluntarily terminated by an employer will be:

(a) At 12:01 a.m. on the date following the postmark date on the envelope containing the application for coverage bearing the signature of the owner, partner or a corporate officer, excluding accountants and agents, and the required advance premium deposit which is received by the system; or

(b) At the time the application and deposit are personally delivered to the system.

2. In the case of a change in an entity or ownership, or both, or the reopening of an account which was terminated by the system, an effective date will be determined by the system based on documentation received or on public record.

3. Termination of coverage will be:

(a) At 12:01 a.m. on the date following the postmark date on the envelope in which the written request to terminate coverage is received by the system.

(b) At the time of personal delivery to the system of the written request to terminate coverage.

(c) On the date specified in the written notification of cancellation of coverage by the system for nonpayment of a premium due the system.

(Added to NAC by Comm'r of Insurance, eff. 7-12-88)–(Substituted in revision for NAC 616.265)

NAC 616B.029 Report of change in ownership of business. *(Expires by limitation on July 1, 1999)*

An employer covered by a policy for workmen's compensation shall immediately report to the system any change in the ownership of the ongoing business.

[Industrial Comm'n, No. 16.040, eff. 7-1-73; renumbered as 8.040, 6-30-82]–(NAC A by Industrial Insurance System, 10-26-83)–(Substituted in revision for NAC 616.490)

NAC 616B.032 Delinquent payroll reports and related premium payments. *(Expires by limitation on July 1, 1999)*

Payroll reports and related premium payments which are not postmarked or personally delivered to a representative of the system on or before the date established by the manager for the receipt of the payroll reports and premiums are delinquent. The employer will be charged a penalty for delinquent reports unless good cause for the delinquency is shown.

[Industrial Comm'n, No. 16.050, eff. 7-1-73; A 6-24-76; renumbered as 8.050, 6-30-82]–(NAC A by Industrial Insurance System, 11-7-95)–(Substituted in revision for NAC 616.492)

NAC 616B.040 Classification procedures: General requirements. *(Expires by limitation on July 1, 1999)*

1. The manager will establish classifications of risk by industry or by a governing class and standard exception and will assign rates from the manual for each account on that basis. If

an agreement for leasing employees has been entered into, the classification of risk assigned to the joint account required to be maintained by NAC 616B.845 will be determined according to the classification of risk established for the client company.

2. The term "industry" or "governing classification" means the class described in the system's manual which most accurately describes the operations of a business.

3. The term "standard exception" means an occupation common to more than one industry listed as a special classification of risk in the system's manual.

4. A business which:

(a) Is conducted at one or more location; and

(b) Consists of a single operation or a combination of separate operations which normally prevail in a business described by a single classification from the manual, is classified by that single classification which most accurately describes the entire operation. The occupations of individual employees within the business are not material to the classification assigned.

5. Separate classifications from the manual will not be assigned for supporting operations which are normally a function performed within the industry or governing classification, even though such supporting operations may be specifically described by a classification described in the system's manual.

[**Industrial Comm'n, No. 9.011, eff. 6-30-82**]- (NAC A by Industrial Insurance System, 10-26-83; 8-16-94)- (Substituted in revision for NAC 616.268)

NAC 616B.043 Classification procedures: Inclusions, exclusions and standard exceptions. *(Expires by limitation on July 1, 1999)*

General inclusions and exclusions and classifications for standard exceptions adopted by the manager will be defined in the manual.

[**Industrial Comm'n, No. 9.015, eff. 6-30-82**]- (NAC A by Industrial Insurance System, 10-26-83; 4-20-84)- (Substituted in revision for NAC 616.270)

NAC 616B.046 Classification procedures: Governing classifications. *(Expires by limitation on July 1, 1999)*

1. The governing classification at a specific job or location is the classification other than a classification for a standard exception, which produces the largest amount of payroll exclusive of the payroll of miscellaneous employees.

2. A business enterprise which includes separate operations which do not normally prevail in the business described by the industry or governing classification will be assigned multiple classifications if the following conditions exist:

(a) None of the separate operations are included within a general inclusion;

(b) The assignment is not contrary to the provisions which define the industry or the governing classification or to any other provisions in the manual;

(c) The operations are physically separate;

(d) Each separate operation is conducted without interchange of labor; and

(e) Payroll records identify the employees engaged in each of the operations for which a separate classification is assigned.

3. If the conditions described in subsection 2 do not exist, the classification assigned with the highest premium rate will apply to the payroll for all employees.

4. Except as otherwise provided in NAC 616B.049, the entire payroll of employees

who work in more than one of the classified operations during the month must be reported at the classification which carries the highest premium rate.

5. For purposes of this section, "miscellaneous employees" means employees who work in a business which is assigned multiple classifications from the manual but who cannot be specifically related to any of the assigned classifications. The payroll of miscellaneous employees will be assigned to the governing classification.

[Industrial Comm'n, No. 9.021, eff. 6-30-82]–(NAC A by Industrial Insurance System, 10-26-83; 4-20-84; 12-4-89)–(Substituted in revision for NAC 616.272)

NAC 616B.049 Classification procedures: Operations which include construction or erection work. *(Expires by limitation on July 1, 1999)*

1. Except as otherwise provided in this subsection and subsection 2, if the operations of an employer include construction or erection work and separate records of payroll are maintained, a division of payroll may be made for each separate and distinct type of construction or erection operation that is specifically described by a classification from the manual. A division of payroll is not permitted if the classification in the manual is restricted by a specific or general "no payroll division" definition.

2. Any operation for which separate records of payroll are not maintained will be assigned to the highest-rated classification applicable to the job or location. Any operation or activity that is normally conducted as part of an industry identified by a classification from the manual is not subject to division of payroll with another classification from the manual, whether or not separate records of payroll are kept.

3. A classification from the manual which requires that the regular hourly wage equal or exceed a specified amount may be used:

(a) If separate records of payroll are maintained; and

(b) Only in connection with the payroll of employees who are engaged in the activity described by the classification and who are paid an hourly wage at least equal to the specified amount.

4. If an employee is paid on a piecework basis, the regularly hourly wage for such an employee must be determined by dividing the payroll of the employee at the job or location by the number of hours worked. If that number of hours worked is unknown, it shall be deemed to be the number of days during which the employee was engaged in performing activities at the site of the job, multiplied by eight.

5. If an employee is paid a salary for a weekly, monthly or other fixed period, his regular hourly wage must be determined by dividing his salary for that period by the number of hours in the period.

6. Except as otherwise provided in this subsection, the payroll of a miscellaneous employee must be assigned to the governing classification. If that classification is determined to be the combination of two classifications that describe a single industry activity and are distinguished by the regular hourly wage, the payroll of a miscellaneous employee must be assigned based on the regular hourly wage of that employee. The provisions of this subsection apply, without limitation, to such employees as superintendents, maintenance or power plant employees, watchmen, shipping and receiving clerks and yardmen. As used in this subsection, "miscellaneous employee" has the meaning ascribed to it in NAC 616B.046.

(Added to NAC by Industrial Insurance System, eff. 12-4-89)–(Substituted in revision for NAC 616.273)

NAC 616B.052 Reclassification. *(Expires by limitation on July 1, 1999)*

1. The system will reclassify a business operation if the system finds that a report of an inspection, the loss experience or other information indicates that the operation involves hazards not contemplated by the current classifications assigned. The system will make such a reclassification effective as of the effective date of the original classification unless good cause is shown for a later effective date. In no case will the reclassification be made retroactive for more than 3 years or the date of the last audit, whichever is more recent.

2. If a change occurs in the nature of the operations of a business, the business is subject to a reclassification as of the date on which the operation changed. The reclassification will not be made retroactive for more than 3 years or the date of the last audit, whichever is more recent.

3. If a reclassification is made retroactive, the system will recalculate the expected losses of the business pursuant to NAC 616B.093 and adjust the modification of premium based on experience accordingly.

4. An employer may apply for a reclassification of his operation by filing a written request with the system. The request must include a brief explanation of the basis upon which the request for change is being made.

[Industrial Comm'n, No. 9.031, eff. 6-30-82]–(NAC A by Industrial Insurance System, 7-12-88; 11-14-95)–(Substituted in revision for NAC 616.274)

NAC 616B.060 Definitions. *(Expires by limitation on July 1, 1999)*

As used in NAC 616B.063 to 616B.108, inclusive, unless the context otherwise requires:

1. "Experience" means the record which:
 - (a) Is established by a risk covered by a certificate of industrial insurance issued by the system; and
 - (b) Is based on the losses incurred by and the payrolls of the risk or other exposures segregated according to the classification of its operations.
2. "Majority interest" means the ownership of:
 - (a) More than 50 percent of an entity;
 - (b) For an entity which has issued voting stock, the majority of its issued stock;
 - (c) For an entity which has not issued voting stock, more than 50 percent of the entity by a majority of its members, the members of the board of directors or the members of any governing body; or
 - (d) For a partnership, more than 50 percent of the profits by one general partner.
3. "Member of an immediate family" includes a person's father, mother, spouse, children, stepchildren and grandchildren.
4. "Modification of premium based on experience" means the multiplier which, when multiplied by the premium developed from the rates in the manual, gives the premium to be charged to a particular risk.

[Industrial Comm'n, Nos. 34.060, 34.070 & 34.090, eff. 12-28-81]–(NAC A by Industrial Insurance System, 10-26-83)–(Substituted in revision for NAC 616.276)

NAC 616B.063 Scope. *(Expires by limitation on July 1, 1999)*

Except as otherwise provided in NAC 616B.120 to 616B.132, inclusive, the provisions of NAC 616B.066 to 616B.108, inclusive, establish a procedure for rating experience to be followed in connection with all certificates of industrial insurance issued by the system.

[Industrial Comm'n, No. 34 Scope, eff. 12-28-81]–(NAC A by Industrial Insurance System, 10-26-83; 11-7-95)–(Substituted in revision for NAC 616.278)

NAC 616B.066 Eligibility. *(Expires by limitation on July 1, 1999)*

1. Except as otherwise provided in subsection 2, a risk is eligible for a rating based on its experience if its expected losses, developed during the period of experience, are:

(a) Equal to or greater than \$4,000 for a rating for experience effective on or after July 1, 1983, but before January 1, 1996.

(b) Equal to or greater than \$4,500 for a rating for experience effective on or after January 1, 1996, but before January 1, 1997.

(c) Equal to or greater than \$5,000 for a rating for experience effective on or after January 1, 1997, but before January 1, 1998.

(d) Equal to or greater than \$5,500 for a rating for experience effective on or after January 1, 1998, but before January 1, 1999.

(e) Equal to or greater than \$6,000 for a rating for experience effective on or after January 1, 1999, but before January 1, 2000.

On and after January 1, 2000, to qualify for a rating based on experience, the amount of expected losses developed during the period of experience must be equal to or greater than \$6,000 increased by the amount of the percentage of increase in the Consumer Price Index, United States City Average for All Urban Consumers, effective on January 1 of the previous year. For each successive year the increase must be cumulative, based on the formula contained in this subsection.

2. A risk is not eligible for a rating for experience if:

(a) The risk holds a unique classification; and

(b) The experience of the risk is not used in the development of rates in the manual.

[Industrial Comm'n, Nos. 34.210 & 34.250, eff. 12-28-81]–(NAC A by Industrial Insurance System, 10-26-83; 3-5-92; 11-7-95)–(Substituted in revision for NAC 616.280)

NAC 616B.069 Applicability; limitation for modification of premium based on experience. *(Expires by limitation on July 1, 1999)*

1. After the system establishes a modification of premium based on experience for a risk, the modification is effective until the next calculation of modification factors. During this period, the modification is applicable to all operations of the risk.

2. A risk may have only one modification in effect at a time.

[Industrial Comm'n, Nos. 34.220 & 34.230, eff. 12-28-81]–(NAC A by Industrial Insurance System, 10-26-83; 12-13-93)–(Substituted in revision for NAC 616.282)

NAC 616B.072 Effect of rating experience of employer. *(Expires by limitation on July 1, 1999)*

1. NAC 616B.060 to 616B.108, inclusive, establishes a procedure which equates the

losses incurred by a particular employer with the average losses incurred by employers managing like employments.

2. An employer whose losses are less than the average earns a credit rating which may reduce his premium rates by 1 to 91 percent below the rate in the manual. An employer whose losses exceed the average for similar employments is rated as a debit. His premium rate is increased from 1 to an unlimited percent above the rate in the manual.

[Industrial Comm'n, No. 34.225, eff. 12-28-81]–(NAC A by Industrial Insurance System, 10-26-83)–(Substituted in revision for NAC 616.284)

NAC 616B.075 Experience considered for modification of premium. *(Expires by limitation on July 1, 1999)*

1. Except as otherwise provided in NAC 616B.060 to 616B.108, inclusive, the entire experience of a risk incurred within the period of experience from all its operations, whether or not the operations are normal to the business, must be reported and will be used in determining the modification of premium based on experience.

2. Any experience which is incurred in work let to and performed by an uninsured subcontractor will be considered part of the experience of the principal contractor.

3. If an employer sells or disposes of all or any part of its assets, discontinues his operations or changes his mode of insuring his operations, the system will use the experience of the risk which was incurred before that event in rating any remaining or future operations of the risk.

[Industrial Comm'n, No. 34.240, eff. 12-28-81]–(NAC A by Industrial Insurance System, 10-26-83)–(Substituted in revision for NAC 616.286)

NAC 616B.078 Determination of ownership. *(Expires by limitation on July 1, 1999)*

1. Except as otherwise provided in this section, the respective interests of persons who own any corporation will be determined on the basis of their ownership of voting stock of the corporation. If the stock of a corporation is traded publicly as a listed stock on an exchange or over the counter, the interests owned by various stockholders are subject to determination by the manager.

2. If an entity is not a partnership and has not issued any voting stock, the manager will determine the ownership of the entity on the basis of its members.

3. If an entity is not a partnership, has not issued voting stock and has no members, the manager will determine the owners of the entity and their respective interests on the basis of its board of directors or comparable governing body.

4. The manager will determine the respective interests of the partners of a partnership in accordance with the participation of each in its profits.

5. If an entity is controlled by a fiduciary, the ownership of the entity shall be deemed to be vested in the fiduciary. As used in this subsection, "fiduciary" does not include a debtor in possession or a trustee under a revocable trust.

[Industrial Comm'n, No. 34.285, eff. 12-28-81]–(NAC A by Industrial Insurance System, 10-26-83)–(Substituted in revision for NAC 616.288)

NAC 616B.081 Combination of entities; merger; consolidation. *(Expires by limitation on July 1, 1999)*

1. Two or more entities must be combined for the purpose of rating experience if the

combination is composed of entities whose majority interest is owned by the same person, group of persons or corporation.

2. If one entity owns the majority interest in a second entity which in turn owns the majority interest in a third entity and so forth, all the entities so related must be combined, regardless of the number of entities in succession.

3. If two or more different combinations of entities are possible in accordance with the provisions of subsections 1 and 2, the combination consisting of the greatest number of entities must be made. Except as otherwise provided in subsections 4 and 5, the experience of any entity included in the combination must not be used in two or more combinations.

4. The experience of an entity included in a combination will not be used in combination with another entity unless an entity included in the combination has entered into an agreement for leasing employees. If such a combination is made, the experience assigned to the joint account required to be maintained pursuant to NAC 616B.845 will be combined with the experience of the employee leasing company after 3 consecutive years of rating the experience of the joint account are completed. This 3-year period will begin on the date on which the agreement for leasing employees is effective. If the agreement for leasing employees is terminated and reestablished on a later date, the calculation of the 3-year period will begin anew on the date on which the reestablished agreement is effective.

5. If a nominal change in the ownership of an entity that is combined with another entity pursuant to subsection 3 prohibits that entity from being included in the combination, the experience developed by the combination before the change in ownership will be used after the change in ownership to determine the modification of premium for each entity formerly included in the combination.

6. If two or more entities are merged, the system will use the incurred experience of both or all of the merged entities in rating the surviving entity.

7. If two or more entities are consolidated, the system will use the incurred experience of both or all of the former entities in rating the new entity.

[**Industrial Comm'n, Nos. 34.260 & 34.270, eff. 12-28-81**]- (NAC A by Industrial Insurance System, 8-16-94)- (Substituted in revision for NAC 616.290)

NAC 616B.084 Effect of change in ownership; determining nature of change; identification of management. (*Expires by limitation on July 1, 1999*)

1. If a nominal change in the ownership of an entity occurs, the past experience of the entity must be utilized for future modification. If a change is material, the past experience must be disregarded and the risk must be written at manual rates until the entity qualifies again for experience rating unless the ownership qualifies for combination with another entity pursuant to NAC 616B.081.

2. Changes in the ownership of an entity which is not a partnership, joint venture or corporation but has issued voting stock must be decided pursuant to the provisions of subsection 3 of NAC 616B.087. The provisions must be applied as though the entity has issued voting stock and the stock was:

(a) Held in equal amounts by each of its members; or
(b) If the entity does not have members, held in equal amounts by each member of the board of directors or comparable governing body.

3. Two or more changes during a 12-month period must be considered as a single change.

4. The system will in each case determine from the applicable regulation whether a change is "nominal" or "material", and if no regulation is expressly applicable, the system will consider this section as a whole and its several parts interpreted pursuant to any relevant evidence which is offered.

5. Management of an entity is vested in ownership, whether active or inactive.

(Added to NAC by Industrial Insurance System, eff. 7-12-88)-(Substituted in revision for NAC 616.291)

NAC 616B.087 Standards to determine nature of change in ownership. *(Expires by limitation on July 1, 1999)*

The system will determine whether a change in ownership is "nominal" or "material" using the following standards:

1. If ownership is held by one person, a change in ownership will be considered material when the sole owner:

(a) Dies, except when a member or members of the immediate family take over the business as executor, executrix, administrator or sole owner, in which case the change will be considered nominal.

(b) Sells the business to another, except when the sale is made to a member or members of the immediate family, in which case the change will be considered nominal.

(c) Files the business for bankruptcy or insolvency, except when the original owner is named as "debtor in possession," in which case the change will be considered nominal.

(d) Forms a trust to operate the business, except when:

(1) The trustor is named sole trustee;

(2) All trustees are immediate family members of the trustor and the trustor has discontinued all individual operations; or

(3) The trustor creates a living trust and retains an unrestricted right to modify or terminate the trust,
in which case the change will be considered nominal.

(e) Forms a partnership, except when:

(1) The partnership is composed of only two general partners or members of the immediate family; or

(2) A limited partnership is formed in which the prior owner is one of not more than two general partners,
in which case the change will be considered nominal.

(f) Forms a corporation, except when the prior owner or members of his immediate family own one-half or more of the issued stock, in which case the change will be considered nominal.

2. If ownership is held by a partnership, a change in ownership will be considered material when:

(a) One or more partners sells, conveys, transfers or assigns his partnership interest, except when, before the change:

(1) All partners were members of an immediate family and after the change one-half of the general partners are members of that immediate family; or

(2) One-half or more of the general partners constitute one-half or more of the general partners after the change,
in which case the change will be considered nominal.

(b) The partnership is dissolved, except when:

(1) All partners were members of an immediate family and one or more of the members of the family constitute one-half or more of the general partners in the new partnership or own a one-half or greater interest in the new entity or entities if they are not partnerships; or

(2) One-half or more of the general partners of the dissolved partnership constitute one-half or more of the general partners in the new partnership or own a one-half or greater interest in the new entity or entities if they are not a partnership, in which case the change will be considered nominal.

(c) The partnership enters bankruptcy or insolvency except when the partnership consists of at least two members of an immediate family if a partner is named as sole trustee or receiver, in which case the change will be considered nominal.

3. If ownership is held by a corporation, a change in ownership will be considered material when:

(a) A new corporation is formed from a dissolved or nonoperative corporation in a process that is neither a merger or a consolidation, except when:

(1) The stockholders common to both the dissolved or nonoperative corporation and the newly formed corporation own or owned one-half or more of the issued voting stock in the old corporation and own one-half or more of the issued voting stock in the newly formed corporation;

(2) The nonoperative corporation owns one-half or more of the issued voting stock of the newly formed corporation; or

(3) The redistribution of voting stock, all of which is held by members of an immediate family, occurs only among members of the immediate family, in which case the change will be considered nominal.

(b) Ownership of the corporation reverts to a sole owner except when:

(1) The sole owner owns or owned one-half or more of the issued voting stock of the dissolved or nonoperating corporation; or

(2) The sole owner was a member of an immediate family which wholly owned the corporation, in which case the change will be considered nominal.

(c) Ownership of the corporation reverts to a partnership, except when:

(1) The stockholders who own or owned one-half or more of the issued voting stock of the dissolved or nonoperative corporation constitute one-half or more of the general partners; or

(2) The corporation was wholly owned by members of an immediate family and a member or members of that immediate family constitute one-half or more of the general partners, in which case the change will be considered nominal.

(d) More than one-half of the issued voting stock is transferred, except when the stockholders who owned one-half or more of the issued voting stock before the sale own one-half or more of the issued voting stock after the sale.

(e) Ownership is acquired by a person who is not a member of the immediate family which owns the entire issued voting stock.

(f) The corporation enters bankruptcy or insolvency except when the shareholder owning the majority of the voting stock is named as sole trustee or receiver.

(g) The experience of all consolidated or merged corporations are combined for

computing the modification for the consolidated or surviving corporation.

4. If ownership is held by a trustee or receivership, a change in ownership will be considered material when there is a change in receiver. If, before the change, there was only one trustee, the provisions of subsection 1 apply. If, before the change, there were two or more trustees, the provisions of subsection 2 apply.

(Added to NAC by Industrial Insurance System, eff. 7-12-88)–(Substituted in revision for NAC 616.293)

NAC 616B.090 Modification of premium based on experience of joint venture. *(Expires by limitation on July 1, 1999)*

1. When two or more contractors associate to undertake a project of construction or demolition as a joint venture, the premium for the operations involved in that venture is subject to modification of their premium based on experience if:

- (a) The contract is awarded in the name of the associated contractors as a joint venture;
- (b) The contractors share responsibility for and participate in the control, direction and supervision of all work which is undertaken; and
- (c) The contractors maintain a common bank account and payroll and common business records.

2. The modification for contractors engaged in a joint venture is the arithmetical average of the modifications of their premiums based on the experience of the contractors as of the effective date of the policy covering their joint venture. A figure of 1.0 for unity will be used for the modification of premium based on experience for any such contractor who is not subject to a rating for experience.

3. The modification of premium based on experience is effective from the inception of the policy covering the joint venture until the next calculation of modification factors. When the joint venture qualifies for a rating, on the basis of its own experience, the modification for its future ratings will be based exclusively upon its own experience.

4. A modification of premium based on experience applies to all certificates of industrial insurance covering the joint venture so long as the combination of contractors associated in the venture is not changed.

5. The experience developed under a joint venture is excluded from the future ratings of the individual contractors.

[Industrial Comm'n, No. 34.290, eff. 12-28-81]–(NAC A by Industrial Insurance System, 10-26-83; 12-13-93)–(Substituted in revision for NAC 616.294)

NAC 616B.093 Calculation of expected losses. *(Expires by limitation on July 1, 1999)*

The system will determine the expected losses for each classification from the manual held by an employer by applying the expected rate of loss applicable on the effective date of the modification of premium based on experience to the payroll developed under the classification during the period of experience. The sum of the expected losses for all classifications held by the employer determines his qualification for a rating for experience.

[Industrial Comm'n, No. 34.310, eff. 12-28-81]–(NAC A by Industrial Insurance System, 10-26-83)–(Substituted in revision for NAC 616.296)

NAC 616B.096 Formula for modification of premium based on experience. *(Expires by limitation on July 1, 1999)*

The system will determine a modification of premium based on experience by using the following formula:

$$\text{Modification of premium based on experience} = \frac{A}{E} \times C + (1.000 - C)$$

Where "A" is the actual limited losses for the period of experience; "E" is the expected losses for the period of experience; and "C" is a credibility factor determined by the following formula:

$$C = \frac{E}{E + 100,000}$$

[**Industrial Comm'n, No. 34.320, eff. 12-28-81**](NAC A by Industrial Insurance System, 10-26-83; 11-7-95)-(Substituted in revision for NAC 616.298)

NAC 616B.099 Application of modification of premium based on experience. *(Expires by limitation on July 1, 1999)*

The system will apply a modification of a premium based on experience:

1. To the premium developed by use of the rates in the manual in force on the effective date of the modification.
2. To all operations of a risk, whether or not any current or new operations are assigned to the classification which was used in establishing the modification.

[**Industrial Comm'n, No. 34.410, eff. 12-28-81**](NAC A by Industrial Insurance System, 10-26-83)-(Substituted in revision for NAC 616.300)

NAC 616B.102 Limitation on losses considered by system. *(Expires by limitation on July 1, 1999)*

1. Except as otherwise provided in subsection 2, the losses of a risk are limited to the actual losses it has incurred in the period of experience.

2. The incurred cost chargeable to a risk's experience for a single accident or claim based on an occupational disease, other than silicosis, is limited to \$5,000 plus 50 percent of the total expected losses for the risk in the period of experience to a maximum:

(a) Of \$75,000 per claim for claims incurred in the most recent year of the period of experience.

(b) Of \$120,000 per claim for claims incurred in the second year of the period of experience.

(c) Of \$175,000 per claim for claims incurred in the oldest year of the period of experience.

[Industrial Comm'n, No. 34.330, eff. 12-28-81]–(NAC A by Industrial Insurance System, 10-26-83; 11-7-95)–(Substituted in revision for NAC 616.302)

NAC 616B.105 Revision of losses. *(Expires by limitation on July 1, 1999)*

1. The system will not revise its calculation of a loss experience because of a departmental, divisional or judicial decision or because of a development in the nature of an injury between two dates of valuation, except in a case where:

- (a) A loss value has been included or excluded through a mistake and not through the exercise of the judgment of the system;
- (b) A claim was not compensable;
- (c) The system has recovered compensation in an action against a third party for an injury sustained by an employee of the employer; or
- (d) A reclassification of a business operation has been made retroactive.

2. In a case falling within one of the exceptions, the revised losses may be used to adjust three immediately preceding ratings.

[Industrial Comm'n, No. 34.420, eff. 12-28-81]–(NAC A by Industrial Insurance System, 11-14-95)–(Substituted in revision for NAC 616.304)

NAC 616B.108 Cases pending against third parties. *(Expires by limitation on July 1, 1999)*

If a claim or suit against a third party has not been settled or finally adjudicated, the loss incurred by the risk will be included in the rating.

[Industrial Comm'n, No. 34.430, eff. 12-28-81]–(Substituted in revision for NAC 616.306)

NAC 616B.111 Evasion of regulations; investigation and action by system; appeal. *(Expires by limitation on July 1, 1999)*

1. The use of subterfuge or device in any form to evade the application of an experience modification factor determined in accordance with the plan for rating experience is prohibited.

2. Any arrangement pursuant to which:

- (a) The employment of all or a substantial portion of the employees of an experience rated entity is or was transferred to one or more labor contractors;
- (b) The services of such employees or other persons employed by one or more labor contractors are thereafter provided to that entity; and
- (c) The services provided by such employees or other persons are subject to the direction, supervision and control of that entity,

is an evasion of the experience modification of that entity and a subversion of the purpose of the plan for experience rating.

3. Whenever the system has good cause to believe or receives any complaint that the application of an entity's experience modification is being or has been evaded, it will investigate the matter.

4. If, after investigation, the system determines that the application of an entity's experience modification is being or has been evaded, it will apply the correct experience modification factor, and may take any action permitted by law against the entity,

notwithstanding any other provision of the manual, the plan for rating experience, retrospective rating plan, or the Nevada Administrative Code.

5. Any such determination or decision of the system may be appealed in accordance with NAC 616D.100.

6. As used in this section, "labor contractor" means any entity who, for a fee or other compensation, employs one or more persons to render services to, for, or under the direction of a third person. The term does not include a person issued a certificate of insurance by the manager to operate an employee leasing company pursuant to NRS 616B.670 to 616B.697, inclusive.

(Added to NAC by Industrial Insurance System, eff. 7-12-88; A 5-23-96)

NAC 616B.120 "Eligible employer" defined. *(Expires by limitation on July 1, 1999)*

As used in NAC 616B.120 to 616B.132, inclusive, unless the context otherwise requires, "eligible employer" means an employer described in subsection 5 of NRS 616B.206 who provides permanent employment for workers in this state. The term does not include an employer who has earned or developed an existing experience modification factor in this state.

(Added to NAC by Industrial Insurance System, eff. 11-7-95)

NAC 616B.123 Evaluation of experience and determination of experience modification factor of eligible employer; evaluation of experience of employee leasing company. *(Expires by limitation on July 1, 1999)*

If an eligible employer permanently relocates his business operations in this state, the manager will evaluate the experience of that employer earned in any state from which the employer relocates and will determine the appropriate experience modification factor for that employer in accordance with the provisions of NAC 616B.120 to 616B.132, inclusive. If the employer is an employee leasing company, the manager will evaluate the experience of the employer based on the administrative employees of the company who are not leased to client companies.

(Added to NAC by Industrial Insurance System, eff. 11-7-95)

NAC 616B.126 Eligible employer to provide certain records to system upon establishing coverage with system; assignment of temporary experience modification factor to employer. *(Expires by limitation on July 1, 1999)*

1. If an eligible employer establishes coverage with the system, the employer shall provide to the system:

- (a) The name and address of each insurer which provided industrial insurance to the employer in the state from which the employer is relocating;
- (b) The policy number of each policy of industrial insurance issued to the employer by the insurer identified pursuant to paragraph (a); and
- (c) A copy of the record or other documents containing the development of the employer's experience modification factor in that state. The copy provided must be verified by the insurer through which the experience modification factor was developed and must be submitted within 90 days after coverage is established with the system.

2. Until a verified copy of the record required by paragraph (c) of subsection 1 is received by the system, the employer will be assigned an experience modification factor of

1.00. On and after July 1, 1995, if the verified copy is not received by the system within the period prescribed in paragraph (c) of subsection 1, the employer will be assigned an experience modification factor of 1.00 until he establishes an experience modification factor in this state.

(Added to NAC by Industrial Insurance System, eff. 11-7-95)

NAC 616B.129 Use by system of experience modification factor of employer who relocates from only one state; determination of composite experience modification factor of employer consolidating or expanding operations previously located in two or more states. (Expires by limitation on July 1, 1999)

1. Except as otherwise provided in subsection 2 of NAC 616B.126, if an eligible employer is relocating from only one state, the employer's experience modification factor earned in that state will be used by the system in this state.

2. If the employer is consolidating or expanding operations previously located in two or more states, a composite experience modification factor will be calculated in the following manner:

(a) The payroll paid by the eligible employer in each state will be weighted based upon the ratio of the aggregate payroll paid in that state to the total aggregate payroll of the employer using the following formula:

$$\text{Payroll Weight 1,2...} = \frac{\text{State Payroll 1,2...}}{\text{Total Payroll 1,2...}}$$

(b) After the payroll weights are determined for each state pursuant to paragraph (a), an experience modification factor component will be determined by multiplying the experience modification factor earned by the employer in each state by the determined payroll weight for that state using the following formula:

$$\text{Experience modification factor component 1,2...} = \text{Payroll Weight 1,2...} \times \text{Experience modification factor 1,2...}$$

(c) After the experience modification factor components are determined pursuant to paragraph (b), a composite experience modification factor will be determined using the following formula:

$$\text{Composite experience modification factor} = \text{Sum of all experience modification factor components}$$

For example:

State	1	2	Total
Payroll	\$30,000,000	\$3,000,000	\$33,000,000
EMF	0.90	0.30	
(Experience Modification Factor)			

Step 1: Payroll Weights **0.91** **0.09**
 \$30,000,000/\$33,000,000 **\$3,000,000/\$33,000,000**

Step 2: EMF Component **0.819** **0.027**
 0.91 x 0.90 **0.09 x 0.30**

Step 3: Composite EMF **0.85 = 0.819 + 0.027**

(Added to NAC by Industrial Insurance System, eff. 11-7-95)

NAC 616B.132 Effective date of assigned experience modification factor; use of percentages of out-of-state and in- state experience to calculate employer's premium.
(Expires by limitation on July 1, 1999)

An experience modification factor assigned pursuant to the provisions of NAC 616B.120 to 616B.132, inclusive, is effective from the date that coverage with the system is established. The following percentages of experience earned in another state and experience earned in this state will be used to calculate an employer's premium pursuant to NAC 616B.060 to 616B.111, inclusive:

Year	1	2	3	4	5
Out-of-State EMF a	100%	100%	100%	0%	0%
Nevada EMF b	0%	0%	0%	100%	100%
Total EMF a+b	100%	100%	100%	100%	100%

(Added to NAC by Industrial Insurance System, eff. 11-7-95)

NAC 616B.140 Definitions. *(Expires by limitation on July 1, 1999)*

As used in NAC 616B.140 to 616B.155, inclusive, unless the context otherwise requires:

1. "Period of the plan" means:

- (a) For the initial period of the plan, the period commencing on July 21, 1993, and terminating on September 30, 1994, and using the period of experience commencing on July 1, 1988, and terminating on June 30, 1992;
- (b) For the second period of the plan, the period commencing on October 1, 1994, and terminating on December 31, 1995, and using the period of experience commencing on July 1, 1989, and terminating on June 30, 1993; and
- (c) For each subsequent period of the plan, the period commencing on January 1 and terminating on December 31 of the same year and using the period of experience set forth in subsection 3 of NAC 616A.210.

2. "Plan" means the plan for controlling excessive losses adopted by the manager pursuant to subsection 7 of NRS 616B.206.

(Added to NAC by Industrial Insurance System, eff. 11-19-93; A 8-16-94; 11-14-95)–
(Substituted in revision for NAC 616.3068)

NAC 616B.143 Identification of employer for participation in plan. *(Expires by limitation on July 1, 1999)*

The system will require an employer to participate in the plan if:

1. His incurred losses exceeded his manual premium in:
 - (a) The two most recent years of his period of experience; or
 - (b) The most recent year of his period of experience and in 2 of the 3 years preceding that year; and
2. He paid an annual standard premium of \$5,000 or more in each of the years in which his losses exceeded his manual premium.

(Added to NAC by Industrial Insurance System, eff. 11-19-93)–(Substituted in revision for NAC 616.30682)

NAC 616B.146 Period of participation in plan. *(Expires by limitation on July 1, 1999)*

After the system identifies an employer as having excessive losses, the employer shall participate in the plan until the end of the period of the plan. At the end of the period of the plan, the system will reevaluate the employer to determine whether he will be required to continue his participation in the plan. If, by that time, the employer has corrected his excessive loss experience so that he no longer meets the criteria for participation in the plan set forth in NAC 616B.143, the system will remove the employer from the plan until the next date of evaluation. On the next date of evaluation, the system will reevaluate the employer to determine whether he will be required to participate in the plan.

(Added to NAC by Industrial Insurance System, eff. 11-19-93)–(Substituted in revision for NAC 616.30684)

NAC 616B.149 Reevaluation of identification of employer as having excessive losses; removal or required participation of employer in plan. *(Expires by limitation on July 1, 1999)*

1. Except as otherwise provided in this section, the system will not reevaluate its identification of an employer as having excessive losses because of a departmental, divisional or judicial decision or because of a development in the nature of an injury between two dates of evaluation. The system will reevaluate its identification of an employer as having excessive losses between two dates of evaluation if:

- (a) A loss value has been included or excluded through a mistake and not through the exercise of the judgment of the system;
- (b) A claim filed against the employer is not compensable;
- (c) The system has recovered compensation in an action against a third party for an injury sustained by an employee of the employer; or
- (d) A reclassification of a business operation has been made retroactive.

2. If the system revises the losses of an employer as a result of one of the exceptions in subsection 1, the system will reevaluate the employer to determine whether he meets the

criteria for participation in the plan.

3. The system will remove an employer from the plan effective on the date of his participation in the plan if:

(a) The system revises his losses pursuant to subsection 1; and

(b) As a result, the employer otherwise would not have been required to participate in the plan.

4. The system will require an employer to participate in the plan effective on the beginning date of the most recent period of the plan if:

(a) The system revises his losses pursuant to subsection 1; and

(b) As a result, the employer meets the criteria for participation in the plan.

(Added to NAC by Industrial Insurance System, eff. 11-19-93; A 11-14-95; 11-14-95)–
(Substituted in revision for NAC 616.30686)

NAC 616B.152 Exemption of employer from plan. *(Expires by limitation on July 1, 1999)*

The manager will exempt an employer from the provisions of NAC 616B.140 to 616B.155, inclusive, if the employer:

1. Has not, on the date of the evaluation, incurred any claims resulting in a temporary total disability in the most recently completed fiscal year;

2. Has established and carried out a written safety program pursuant to NRS 618.383 and the regulations adopted pursuant thereto; and

3. Has not previously been identified as an employer with excessive losses.

(Added to NAC by Industrial Insurance System, eff. 11-14-95)

NAC 616B.155 Penalties for failure to correct excessive losses. *(Expires by limitation on July 1, 1999)*

1. If an employer's losses are still excessive after he participates in one period of the plan, the manager may require the employer to:

(a) Pay a surcharge to cover a percentage of the costs incurred by the system for hiring a consulting firm that specializes in controlling losses to provide more intensive services or a higher frequency of services to the employer in order to control excessive losses;

(b) Carry out a retrospective rating plan that the system has established for employers with excessive losses;

(c) Pay, in addition to the mandatory deductible of \$1,000 set forth in NRS 616B.221, a deductible in increments of \$500 for each consecutive period of the plan in which the employer participates; or

(d) Take any combination of the actions set forth in paragraphs (a), (b) and (c).

2. The system will not adjust the amount of an employer's premium based on any requirement that the manager imposes pursuant to subsection 1.

(Added to NAC by Industrial Insurance System, eff. 11-19-93)–(Substituted in revision for NAC 616.30688)

NAC 616D.100 Appeal to manager concerning employer's account. *(Expires by limitation on July 1, 1999)*

Any employer or other interested party who is aggrieved by a determination of the system's

staff concerning an employer's account may appeal from the determination to the manager.

[Industrial Comm'n, No. 3.130, eff. 6-30-82]–(NAC A by Industrial Insurance System, 10-26-83)–(Substituted in revision for NAC 616.5461)

NAC 616D.110 Notice to manager. *(Expires by limitation on July 1, 1999)*

1. A notice of an appeal by a party aggrieved by a determination of the system's staff concerning an employer's account must be made in writing and filed with the manager within 30 days after the date of the determination.

2. The notice must contain a brief statement specifying:

- (a) The determination of the system's staff that the party is appealing;
- (b) The party's reasons for disagreeing with the determination; and
- (c) The relief that the party is seeking.

3. If the notice does not comply with the requirements of this section, the manager or his designee will not schedule a hearing until the party corrects the notice.

[Industrial Comm'n, No. 3.140, eff. 6-30-82]–(NAC A by Industrial Insurance System, 10-26-83; 12-13-93)–(Substituted in revision for NAC 616.5463)

NAC 616D.120 Service of notice; notice of representation. *(Expires by limitation on July 1, 1999)*

1. All notices, orders and other documents required to be filed in any hearing by any party must be served upon all other parties or their representatives.

2. Any attorney retained by or representing any party shall forthwith notify the system of his retention or representation.

3. Any attorney of record wishing to withdraw from a docketed hearing shall give written notice to the system of his intended withdrawal and shall serve such notice upon all parties of record at least 10 days before his withdrawal.

[Industrial Comm'n, Nos. 3.100 & 3.110, eff. 6-30-82]–(Substituted in revision for NAC 616.5465)

NAC 616D.130 Materials to be filed and served before hearing; time for filing; effect of failure to comply with requirements for filing. *(Expires by limitation on July 1, 1999)*

1. Within the times prescribed in subsection 2, each party shall file with the manager or his designee and serve upon all other parties or their representatives:

- (a) All documents to be introduced as evidence at the hearing;
- (b) A statement of the issues to be raised;
- (c) A list of witnesses, a brief summary of their proposed testimony and a statement indicating whether any of the testimony is to be taken by use of the telephone; and
- (d) An estimate of the length of time required to present the case, including rebuttal testimony and argument.

2. The materials required by subsection 1 must be filed:

(a) By the party requesting the hearing or his representative, at least 15 calendar days before the scheduled hearing.

(b) By the system, at least 10 calendar days before the scheduled hearing.

3. If a party or his representative fails or refuses to comply with this section, the manager or his designee may:

- (a) Restrict or prohibit the introduction of evidence;
- (b) Dismiss the matter; or
- (c) Issue any other appropriate order.

(Added to NAC by Industrial Insurance System, eff. 12-13-93)–(Substituted in revision for NAC 616.5466)

NAC 616D.140 Classification of parties. *(Expires by limitation on July 1, 1999)*

1. A party to a hearing before the manager or his designee must be called the employer, an interested party or staff.

2. Any person other than the employer or a member of the staff who may be affected by the proceeding must be called an "interested party."

3. The staff of the system must be called "the staff."

[Industrial Comm'n, Nos. 3.010, 3.021 & 3.031, eff. 6-30-82]–(NAC A by Industrial Insurance System, 12-13-93)–(Substituted in revision for NAC 616.5467)

NAC 616D.150 Continuances. *(Expires by limitation on July 1, 1999)*

1. A hearing before the manager or his designee may be continued if:

(a) A request for a continuance is filed by a party at least 10 calendar days before the hearing; and

(b) The manager or his designee approves the request.

2. Except in cases of an emergency, the manager or his designee will not grant a request for a continuance that is filed less than 10 calendar days before the hearing.

3. If the manager or his designee grants a continuance, the hearing will be set at the end of the manager's or his designee's calendar of hearings.

(Added to NAC by Industrial Insurance System, eff. 12-13-93)–(Substituted in revision for NAC 616.5468)

NAC 616D.160 Entry of appearance. *(Expires by limitation on July 1, 1999)*

Employers, members of the system's staff and interested parties must enter their respective appearances at the beginning of a hearing or at such other time as may be designated by the manager or his designee. They must enter their appearances by giving their names and addresses and stating their positions or interests to the reporter or secretary, who shall include that information in the minutes of the hearing.

[Industrial Comm'n, No. 3.051, eff. 6-30-82]–(NAC A by Industrial Insurance System, 10-26-83; 12-13-93)–(Substituted in revision for NAC 616.5469)

NAC 616D.170 Representation of parties; qualifications of attorneys. *(Expires by limitation on July 1, 1999)*

1. Any party to a hearing may appear through any representative of his choice.

2. An attorney appearing as counsel in a hearing must be an attorney at law who is admitted to practice in this state and is in good standing before the highest court of this state.

3. No former member of the system's staff, after his termination of employment with

the system or the Nevada industrial commission, may act as an attorney or representative in connection with any contested matter in which he had actively participated as such an employee.

[Industrial Comm'n, Nos. 3.041 & 3.120, eff. 6-30-82]–(Substituted in revision for NAC 616.5471)

NAC 616D.180 Hearing. *(Expires by limitation on July 1, 1999)*

1. Within 30 days after receiving an appeal, the manager or his designee will schedule a hearing.

2. Within 30 days after a hearing on an appeal or his receipt of a transcript of the hearing if a transcript has been requested by any party or the system, the manager or his designee will make his decision affirming, reversing or modifying the previous determination.

3. The manager or his designee will serve a copy of his written decision and a notice of the right to judicial review upon all parties.

[Industrial Comm'n, No. 3.150, eff. 6-30-82]–(NAC A by Industrial Insurance System, 10-26-83; 12-13-93)–(Substituted in revision for NAC 616.5473)

NAC 616D.190 Failure of party to appear. *(Expires by limitation on July 1, 1999)*

If a party fails to appear at the time and place set for the hearing, the manager or his designee may:

1. Dismiss the proceeding, with or without prejudice; or

2. Rule on the matter based upon the evidence submitted by the parties. The manager or his designee will not reschedule the matter for another hearing.

[Industrial Comm'n, No. 3.160, eff. 6-30-82]–(NAC A by Industrial Insurance System, 12-13-93)–(Substituted in revision for NAC 616.5475)

NAC 616D.200 Rehearings. *(Expires by limitation on July 1, 1999)*

1. A written petition for a rehearing based upon good cause or newly discovered evidence may be filed with the manager or his designee within 30 days after service of his final decision.

2. If the manager or his designee does not grant a rehearing within 15 days, the petition shall be deemed denied.

3. A petition for rehearing does not suspend the effectiveness of the decision of the manager or his designee unless otherwise ordered by the manager or his designee.

[Industrial Comm'n, No. 3.180, eff. 6-30-82]–(NAC A by Industrial Insurance System, 12-13-93)–(Substituted in revision for NAC 616.5477)

NAC 616D.210 Record of hearing. *(Expires by limitation on July 1, 1999)*

1. All formal hearings before the manager or his designee will be reported or recorded electronically.

2. Any party, the manager or the manager's designee may order a transcript of the report or recording of the hearing.

3. A copy of a transcript or file of the manager or his designee will be furnished to any

party upon request and payment for the copy.

[**Industrial Comm'n, No. 3.170, eff. 6-30-82**]- (NAC A by Industrial Insurance System, 10-26-83; 12-13-93)- (Substituted in revision for NAC 616.5479)

**DEPARTMENT OF INSURANCE
REGULATIONS TO BE AMENDED EFFECTIVE 7/1/99**

NAC 616A.120 "Fiscal year" defined.

"Fiscal year" means [**a period beginning July 1 and ending on the following June 30.**] *any 12 month period as determined by the Insurance Commissioner.*

[**Industrial Comm'n, No. 31.101, eff. 10-13-77**]- (Substituted in revision for NAC 616.030; *Transferred to the Commissioner of Insurance, effective 7-1-99*)

NAC 616A.170 "Manual" defined.

"Manual" means the [**"Manual of Classifications and Basic Rates" adopted and used by the system.**] *classifications and the basic rates filed by the advisory organization and adopted by the Insurance Commissioner.*

(Added to NAC by Industrial Insurance System, eff. 10-26-83)- (Substituted in revision for NAC 616.039; *Transferred to the Commissioner of Insurance, effective 7-1-99*)

**REGULATION TO BE TRANSFERRED TO THE INSURANCE COMMISSIONER
EFFECTIVE 7/1/99**

NAC 616A.310 Computation of time.

In computing any period of time prescribed in chapters 616A to 616D, inclusive, of NAC, the day of the act from which the designated period begins to run must not be included. The last day of the period so computed must be included unless it is a Saturday, Sunday or legal holiday, and in that case, the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

[**Industrial Comm'n, No. 2.041, eff. 6-30-82**]- (Substituted in revision for NAC 616.066; *Transferred to the Commissioner of Insurance, effective 7-1-99*)