



Certification Page Regular and Emergency Rules

Revised September 2016

Emergency Rules (After completing all of Sections 1 through 3, proceed to Section 5 below)

Regular Rules

1. General Information

a. Agency/Board Name Department of Workforce Services		
b. Agency/Board Address 1510 East Pershing Blvd.	c. City Cheyenne	d. Zip Code 82002
e. Name of Agency Liaison Marcia J. Price		f. Agency Liaison Telephone Number (307) 777-6746
g. Agency Liaison Email Address marcia_price@wyo.gov		h. Adoption Date 7/18/17
i. Program Workers' Compensation Division		

2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

No. Yes. Please provide the Enrolled Act Numbers and Years Enacted: **SEA 54 2017**

3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.
(Please use the Additional Rule Information form for more than 10 chapters and attach it to this certification)

Chapter Number:	Chapter Name:	<input checked="" type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
2	Employer Coverage, Compliance, and Discount Programs	
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed

3. State Government Notice of Intended Rulemaking

a. Date on which the Proposed Rule Packet (consisting of the Notice of Intent as per W.S. 16-3-103(a), Statement of Principal Reasons, strike and underscore format and a clean copy of each chapter of rules were: **5/24/17**

- approved as to form by the Registrar of Rules; and
- provided to the Legislative Service Office and Attorney General:

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. No. Yes. N/A

b. A public hearing was held on the proposed rules. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:

c. If applicable, describe the emergency which requires promulgation of these rules without providing notice or an opportunity for a public hearing:

5. Final Filing of Rules

a. Date on which the Certification Page with original signatures and final rules were sent to the Attorney General's Office for the Governor's signature:

b. Date on which final rules were approved as to form by the Secretary of State and sent to the Legislative Service Office:

c. The Statement of Reasons is attached to this certification.

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct.

Signature of Authorized Individual

Printed Name of Signatory

John Cox

Signatory Title

Director, Department of Workforce Services (DWS)

Date of Signature

7-18-17

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature

Date of Signature

Principal Statement of Reason – WC Chapter 2 – Section 3 – Experience Rating

The Workers' Compensation Division is proposing a change in Chapter 2, Section 3, due to a 2017 Wyoming statute change, 27-14-207(h)(j), SEA 54. This change will clarify and determine the calculations used for out-of-state employers experience modification ratings.

This rule change will also correspond with WC Chapter 3 on compliance and the process of out-state employer's sharing their experience modification rate with the Division. Other changes included minor formatting updates.



Matthew H. Mead
Governor

State of Wyoming Department of Workforce Services

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John Cox
Director
John Ysebaert
Deputy Director

July 18, 2017

Public Comments
For WC Chapter 2 – Employer Coverage, Compliance and Discount Programs

On May 28, 2017, a public notice was published in the Casper newspaper for statewide notice.

The 45 day public comment period for this rule expired on July 17, 2017.

No public comments were received.



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Development for Wyoming's Future.



CHAPTER 2

EMPLOYER COVERAGE, COMPLIANCE, AND DISCOUNT PROGRAMS

Section 1. General.

(a) Application for Determination of Coverage. No employer subject to the Act defined in W.S. § 27-14-101 shall commence business or engage in any work in Wyoming without applying for coverage and receiving a statement of coverage from the Division. The application shall supply such information as the Division requests regarding the nature, location, extent and duration of the intended work. Employers determined by the Division to be non-resident employers must comply with the bond or security requirements of W.S. § 27-1-106 and 27-14-302; a non-resident employer is that employer defined in W.S. § 27-14-102(a)(xiii).

(b) Proof of Coverage (POC) Certificate.

(i) For the purposes of W.S. § 27-14-306 a POC certificate shall further contain all of the following:

(A) The applicable time-frame of the certificate;

(B) A statement as to the applicability of insurance coverage for employees of the nonresident employer, to specifically address employees that are Wyoming residents.

(I) Failure to provide or maintain a POC certificate, or provide Workers' Compensation coverage for all employees engaged in extra hazardous employment, will require the nonresident employer to provide Wyoming Workers' Compensation coverage.

(c) Employer Number; Corporations. Every employer participating under the Act shall be assigned an employer number by the Division. Employers who are incorporated must provide a copy of the certificate of authority issued by the Secretary of State of Wyoming authorizing the employer to do business in the state of Wyoming. A copy of the corporate minutes that identifies the corporate officers of the corporation must also be filed with the Division.

(d) Reports When no Premiums Have Accrued. Every employer subject to the Act is required to send in the regular reports even though no premiums have accrued with respect to a particular reporting period. Employers shall file reports for such period and shall continue to file such reports until the Division has received and approved a notification to discontinue filing reports.

Section 2. Successor Employer.

(a) For purposes of W.S. § 27-14-207(b), "account" includes: premium rate, experience modification rating, premium credit program, safety discount program, drug and alcohol testing discount program, health and safety consultation discount program, and outstanding accounts receivable including past due or delinquent premium, interest, penalties, small employer group credit, and claims reimbursement, until recalculated for the subsequent rate year.

(b) For purposes of W.S. § 27-14-207(c), "account" includes: premium rate, experience modification rating, premium credit program, safety discount program, drug and alcohol testing

discount program, health and safety consultation discount program, and small employer group credit, until recalculated for the subsequent rate year.

Section 3. Experience Rating.

(a) One (1) experience modification rating shall be assigned to each employer number for those eligible employers under the Act. An employer who elects to establish a separate employer number for each separate legal entity of the employer's businesses shall be assigned an experience rating for each employer number.

(b) An employer's experience modification rating (whereby, hereafter shall be known as EMR) is computed by using three (3) years claims experience [or maximum available portions of three (3) years] for each eligible employer.

(i) Private sector employers will receive an EMR based on three (3) years claims experience effective January 1 of their fifth (5th) calendar year.

(ii) Public sector employers will receive an EMR based on three (3) years claims experience effective July 1 of their sixth (6th) fiscal year.

(c) Pursuant to W.S. § 27-14-207(j), the out-of-state employer must direct their insurance company to submit their EMR history directly to the Division.

(i) If an out-of-state employer expanding or moving their operations to Wyoming has previously been self-insured, and does not have any experience history available from a third party workers' insurance company, they will be assigned an EMR of one (1) and will be charged at the industry base rate for their classification.

(ii) The Division will use the employers experience history to calculate the EMR according to the current EMR split-plan calculation.

(d) For an employer having less than one (1) full year (private employers follow a fiscal year; public employers follow a calendar year) of premium obligation during the EMR period, the employer's EMR will be equal to a modification of one (1).

(e) For an employer having greater than one (1) full year of premium obligation during the EMR period, but less than three (3) full years of premium obligation, the actual premium obligation will be based on the employer's actual experience as recorded by the Division in the quarterly or monthly reports in the premium year.

(f) The Division, through the qualified actuary, as defined by W.S. § 27-14-201 (b), shall annually determine key parameters of the EMR plan to meet the requirements of W.S. § 27-14-201(d). The Division will notify each employer who qualifies for an EMR of the key parameters (i, ii, iii) of this sub-section on the yearly EMR notice. The key parameters will also be published on the Division website for any employer to inspect.

(i) Split Point – The claim cost amount at which an employer's EMR moves from the measure of frequency to the measure of severity. The Division will apply a plus or minus cap of

15% (percent) to the employer's EMR beginning with rate year 2017 and to apply to rate year 2018, excluding Group I.

(ii) Group Premium Rate – There will be five (5) groups for premium bands. Each Group Premium Rate will have a credit/debit maximum percent amount to affect the employer's Experience Modification Rate (EMR). At no time shall this exceed +/- eighty-five percent (85%). Individual employer groups are based on the amount of premium over a three (3) year period and the actuarial process.

- Group 1 not to exceed +/- 20%
- Group 2 not to exceed +/- 25%
- Group 3 not to exceed +/- 45%
- Group 4 not to exceed +/- 65%
- Group 5 not to exceed +/- 85%

(iii) Chargeable minimum and maximum – There will be a claim cost minimum on medical only cases, which are not ratable to the employer and will not affect the EMR. There will also be a claim cost maximum at which point claim cost above the maximum single loss are not ratable and will not affect the EMR.

(g) For employers in Group I, the experience adjustment for claims occurring within the three (3) year EMR period shall be as follows:

- (i) Zero percent (0%) if the employer's account has been charged with one (1) claim which exceeds the annual minimum claim cost amount.
- (ii) Twenty percent (20%) penalty if the employer's account has been charged with two (2) or more claims which exceed the annual minimum claims cost amount.
- (iii) Twenty percent (20%) credit if the employer's account has not been charged with a claim exceeding the annual claims cost amount.

(h) The formula for computing the split plan experience modification rating (EMR) is defined below, with each term defined in Section 15, is as follows:

$$1 + \left((Z_p) \frac{A_p - E_p}{E} \right) + \left((Z_e) \frac{A_e - E_e}{E} \right) = \text{Modification (EMR)}$$

Where:

- Zp = Credibility Primary Value
- Ap = Actual Primary Losses
- Ep = Expected Primary Losses

Ze = Credibility Excess Value
Ae = Actual Excess Losses
Ee = Expected Excess Losses
E = Expected Losses

(See Glossary of Terminology in Section 15.)

(i) **Contesting Experience Modification Rating.** Any employer may contest the annual EMR or case reserve amounts assigned by the Division. Contest shall be made by filing a written objection with the Division within thirty (30) days after notification by the Division as provided in W.S. § 27-14-201(h). The Division shall resolve the matter administratively within forty-five (45) days after the filing of the objection. If the matter is not resolved within forty-five (45) days then the Division shall refer the objection to an independent hearing officer appointed for such purpose, pursuant to these rules and the Wyoming Administrative Procedure Act.

(j) **Contesting Chargeability of Claims Costs.** An employer may apply for non-chargeability of claims costs pursuant to W.S. § 27-14-201(d).

(i) An employer who is current on premium payments required by the act may contest the chargeability of claims costs by filing a written application with the Division on a form supplied by the Division.

(ii) The application to determine chargeability must be filed no later than one (1) year after the determination of compensability for an injury occurring on or after July 1, 2015.

(iii) Upon receipt of said application, the Division shall schedule a time and date for a hearing. The employer shall be notified of the time and date of the hearing.

(iv) The hearing shall be conducted pursuant to the Division's Rules, Chapter 1, Section 4 or <https://rules.wyo.gov/Search.aspx?mode=1>

(v) The hearing shall be conducted by a panel from the Division, including the Administrator of the Workers' Compensation Division, the Deputy Administrator of Employer Services, the Deputy Administrator of Claims, the District Manager from the appropriate district, the claims analyst assigned to the underlying claim, a representative from OSHA, and a representative from the Attorney General's Office.

(vi) The employer will present its case to the panel after which the panel shall take the issue under advisement and issue a written, final determination.

(vii) If an employer fails to appear for the hearing, the initial determination on chargeability will become the final agency action.

Section 4. Classifications. The employer shall provide a true and accurate description of its business operations prior to commencing operations, which require coverage under the Act for eligible workers in the state of Wyoming. The employer is required to notify the Division in writing of any change in business operations, which affect the industrial classification of the business for purposes of workers' compensation. The employer shall grant reasonable access to the Division's representative to verify information provided by the employer with respect to the business

operations.

(a) **Classification Procedures.** The Division will assign an industrial classification or classifications pursuant to the North American Industry Classification System (NAICS) codes provided by the Federal Bureau of Labor Statistics via the Internet or in a printed manual dated 2002 or later. The industrial classification(s) assigned will be that which best describes the primary business of the employer. Businesses conducted at one or more locations which normally prevail in the primary industrial classification will not be assigned separate classifications for supporting operations, with certain specific standard exceptions for clerical office occupations, inside sales occupations, outside sales occupations, or temporary help occupations.

(b) **Classification Revisions.** The Division shall correct industrial classifications which it determines to be incorrect. The Division shall give the employer written notification of any change in industrial classification and such changes shall become effective on the first day of the reporting period following the reporting period in which the Division gives written notification.

(c) **Contesting Classification.** Any employer may contest the industrial classification assigned by the Division. Contest shall be made by written objection to the Division within thirty- (30) days of the employer's notification of the classification assigned by the Division. The Division shall resolve the matter administratively within forty-five (45) days or refer the objection to an independent hearing officer appointed for such purpose, pursuant to the Wyoming Administrative Procedure Act.

Section 5. Audits. Investigation and examination of an employer's records may be conducted in accordance with W.S. § 27-14-803. The Division may examine books, accounts, payrolls or the business operation of any employer to determine if the employer has engaged in activity in violation of the Act, to verify information provided to the Division by the employer, and for the administration of this Act. The employer shall grant reasonable access to the Division's representative to examine information pertinent to the employers' business operations.

(a) **Audit Procedures.** The Division's representative will conduct an audit and review the preliminary findings with the employer. These audit findings will then undergo final review by the Division with correction of any findings, which it determines to be incorrect. The Division will then issue a Final Audit Determination Notice to the employer upon completion of the audit.

(i) Any unreported payments made to any individual, as found in an audit of an employer's records, shall be presumed to be unreported gross wages unless documentation is provided by the employer that the individual meets the statutory requirements of W.S. 27-14-102(a)(xxiii) as an independent contractor. The burden is upon the employer to provide such documentation.

(b) **Contesting Audit.** Any employer may contest the audit conducted by the Division. Contest shall be made by filing a written objection with the Division within thirty (30) days after notification by the Division as provided by the Final Audit Determination Notice. The Division shall resolve the matter administratively within forty-five (45) days or refer the objection to an independent hearing officer appointed for such purpose, pursuant to the Wyoming Administrative Procedure Act.

Section 6. Proceedings for Forfeiture of Non-Resident Employers' Surety Bond.

Prior to proceedings for forfeiture of a bond by a non-resident employer, the Division shall notify the employer in writing of the events triggering a possible forfeiture, the amount of the bond to be forfeited, and the employer's right to avoid forfeiture by paying an equivalent amount to the Division within thirty (30) days. The amount to be forfeited shall be the sum of the following:

- (a) The remaining reserved amounts for compensable injuries to the employer's workers less the cumulative premiums paid by the employer;
- (b) All unpaid premiums, penalties and interest accruing as a result of late payment or non-payment of said premiums, and reasonable auditing expenses; and,
- (c) Any and all amounts due as a result of unpaid wages as determined by the Labor Standards Program in the Department of Workforce Services.

Section 7. Deductible Program.

(a) Pursuant to W.S. § 27-14-201(t)(i), an employer may apply to participate in a deductible program. Employers must apply for the deductible program in writing on a form prescribed by the Division. Terms of the deductible program shall be defined by contract entered into between the employer and Division.

(b) The Division may require applying employers to undergo a financial audit to ensure financial stability. The audit may include a credit check and review of company financial reports. The Division shall analyze each applicant based on risk analysis and sound business practices. The Division may refuse any applicant into the deductible program if it determines that the proposed contract does not represent a sound business practice or decision.

(c) For any employer enrolled in the deductible program, the Division will process and pay claims in accordance with the Wyoming Worker's Compensation Act. The employer shall reimburse the Division for all costs paid by the Division on individual claims up to the amount of the contractually agreed deductible.

(d) The deductible levels available are: \$1,000.00, \$5,000.00, \$10,000.00, \$25,000.00, \$50,000.00, \$75,000.00, or \$100,000.00. The maximum deductible level offered to an employer by the Division shall not be more than fifty percent (50%) of the employer's standard premium.

(e) The amount of the contractually agreed upon deductible will be applied to the employer's industry base rate before any discounts under, Sections 8-10, as seen below, are calculated and applied.

Section 8. Safety Program; Employer Discount.

(a) Pursuant to W.S. § 27-14-201(o) employers may receive a premium base rate discount, as determined through the Division's premium rate setting process for its employment classification, by participating in a safety program.

(b) Employers must have at least one (1) employee to participate in the program, establish and maintain certificates of good standing with Wyoming Workers' Compensation, Unemployment

Insurance, and the Secretary of State. Certificates of good standing shall be reviewed on a quarterly basis to ensure compliance. If certificates of good standing cannot be established and maintained by the employer, that employer shall be disqualified from the program until such time as the employer reapplies for the program and all program requirements have been met.

(c) Pursuant to W.S. § 27-14-803 and in accordance with Chapter 2, Section 5. Audits, the Division may investigate and examine the employer's documentation as pertains to compliance with its approved health and safety program(s). If the Division finds the employer to be in noncompliance after reviewing the relevant documentation, participation in the employer base rate discount program may be revoked or reduced.

(d) This program shall comply with some or all of the following provisions dependent on the level of discount participation:

(i) a formal declaration, in writing of a company-wide loss prevention and loss control policy; coordinator;

(ii) a formal creation of a risk assessment (safety) committee or rules;

(iii) clearly defined and posted loss prevention (accident prevention);

(iv) all employees have undergone hazard assessment training;

(v) a substance abuse training plan;

(vi) written policies/procedures on claims management; and

(vii) written policies and procedures establishing a drug-free workplace, which may include an employee assistance program to assist employees with alcohol or other drug problems. These policies shall be posted in a conspicuous place where they may be regularly viewed by employees:

(A) The policy shall:

(I) establish that the unlawful use, possession, transfer or sale of illegal drugs or controlled substances and the misuse of alcohol by employees during work hours are prohibited;

(II) provide an explanation of the consequences of violation of the employer's drug-free policy, which may include a referral for therapeutic help, discipline and/or discharge; and,

(III) encourage the designation of totally or partially smoke free workplace.

(B) Employers shall post a list of community resources that provide substance abuse treatment and prevention services in a conspicuous place where they may be regularly viewed by employees. The Wyoming Department of Health shall provide the list on the website of the Substance Abuse Division or in hard copy to employers requesting the list.

(C) Employers are not required to pay the costs of treatment or any other intervention to qualify for the safety discount program.

(D) Employers enrolled in an approved safety discount program on the effective date of these rules shall have one year from the effective date of these rules to comply with the drug-free workplace requirements.

(E) Employers enrolling on or after the effective date of these rules shall comply with the drug-free workplace requirements upon enrollment.

(e) Applications to participate in this program may be submitted to the Division at any time, and upon approval, premium base rate discounts shall be implemented in the subsequent calendar quarter.

(i) To achieve a three and one-third percent (3.33%) discount to its premium base rate, an employer must have a documented health and safety program; and,

(ii) To achieve a six and two-third percent (6.66%) discount to its premium base rate, an employer must have an established Health and Safety committee and documented monthly safety meetings; and,

(iii) To receive a ten percent (10%) discount, an employer must achieve and maintain a loss ratio of equal to or less than ten percent (10%).

(f) Premium base rate discount renewals shall be in effect each year only in the event that the owner or designated officer signs and submits an affidavit attesting to the fact that the health and safety program has been continually utilized for the previous year. If an audit is conducted and the employer is found to be out of compliance with any of the previous requirements or have experienced a fatality, catastrophe, willful or repeat serious offense, the employer shall be removed from the program until such time as the employer reapplies for the program and all program requirements have been met.

(g) Safety Incentive. To be eligible for the safety discount, an employer must have submitted its payroll reports and paid full premium for all prior reporting periods.

Section 9. Drug and Alcohol Testing Program; Employer Discount

(a) Pursuant to W.S. § 27-14-201(o) employers may receive a premium base rate discount, as determined through the Division's premium rate setting process for their employment classification, by participating in a drug and alcohol testing program approved by the Division.

(b) Employers must have at least one (1) employee to participate in the program, establish and maintain certificates of good standing with Wyoming Workers' Compensation, Unemployment Insurance, and the Secretary of State. Certificates of good standing shall be reviewed on a quarterly basis to ensure compliance. If certificates of good standing cannot be established and maintained by the employer, that employer shall be removed from the program until such time as the employer reapplies for the program and all program requirements have been met.

(c) Applications to participate in the drug and alcohol testing program may be submitted to the Division at any time and, upon approval, premium base rate discounts shall be implemented in the subsequent calendar quarter.

(d) Upon receipt of a completed application, the Division shall review the application for compliance with these rules and either approve or deny the application. The Division shall deny an application if an applicant fails to meet all of the requirements of these rules. The Division shall also refuse to renew an application if the employer no longer meets or has violated any provision of these rules.

(e) After approval or renewal, the applicable premium base rate discount shall be applied to the following four (4) calendar quarters unless revoked pursuant to these rules.

(f) Applications are approved for four (4) calendar quarters and shall be submitted annually.

(g) Applications shall include the employer's name, printed name and title of the officer/owner, signature of the officer/owner, and date attesting the information contained in the application is a true and factual representation of the drug-free workplace program. A drug-free workplace program shall contain all of the following:

(i) The written policy, which shall include all of the following:

(A) A statement providing for inclusion of all Workers' Compensation covered employees in the substance abuse testing program.

(B) A statement of required types of substance abuse testing.

(C) A statement of actions the employer may take against an employee or job applicant on the basis of a positive confirmed test result.

(D) A statement of consequences of an employee's or job applicant's refusal to submit to a drug test.

(E) A general confidentiality statement.

(F) A statement advising employee who receives a positive confirmed test result that he or she may contest or explain the result to the employer within 5 working days after written notification of the test result.

(G) A statement informing an employee or job applicant of the federal Drug-Free Workplace Act, if applicable.

(H) A statement affording provision of sixty (60) days notice prior to implementation of substance abuse testing.

(I) A statement that substance abuse testing is required to be on vacancy announcements for which testing is required.

(J) A statement that notification of substance abuse testing is posted in an appropriate and conspicuous location on employer's premises.

(K) A statement informing employees and job applicants that copies of the policy are available in the employer's personnel office or other suitable location.

(ii) Substance abuse testing, to the extent permitted by Federal Codes, Wyoming State Statutes, and Local Ordinances, which shall include all of the following:

(A) Pre-employment, random, reasonable suspicion and post-accident testing.

(B) Drug and alcohol testing protocols as specified in Chapter 10, Section 2 shall apply to all random, reasonable suspicion and post-accident testing.

(I) Pre-employment substance abuse testing is exempt from the protocol as specified in Chapter 10, Section 2 and alcohol testing is not required for job applicants.

(II) For random and reasonable suspicion testing, a commercially available urine or hair follicle test consisting of synthetic amphetamines; amphetamines; synthetic marijuana "spice"; marijuana; cocaine; opiates and PCP with specific gravity incorporating Substance Abuse and Mental Health Services Administration (SAMHSA) cutoff levels shall be utilized by a Third Party Administrator. A negative test shall require no further testing unless use of another drug not included on the on-site test is suspected, in such case the sample would be processed as if it were a positive on-site test. A positive drug or low specific gravity onsite urine test shall be immediately processed pursuant to Chapter 10, Section 2. Protocol shall require transfer of the specimen in front of the employee to a container supplied by a certified laboratory, and sealed per instruction with the employee initialing the evidence seal.

(III) Post-accident testing shall be exclusively processed per Chapter 10, Section 2 with strong recommendation that the specimen be a blood sample.

(C) To the extent permitted by Federal Codes, State Statutes, and Local ordinances, random testing shall be conducted, at a minimum, on twenty percent (20%) of the average staff on an annualized basis.

(iii) Resources available for employee assistance.

(A) To include either a statement advising employee of an Employee Assistance Program (EAP) or a statement advising employee of employer's resource file of assistance programs and other persons, entities, or organizations designed to assist employees with personal or behavior problems.

(iv) Employee education

(A) The employer shall provide at least one (1) hour of employee substance abuse education training per year. Employers shall retain records, to include attendee's signatures, dates and training topics, to document employee participation in education.

(v) Supervisor training

(A) The employer shall provide at least two (2) hours of substance abuse education training per year to all supervisors. Supervisors shall receive training to encompass at least sixty (60) minutes on alcohol misuse and at least sixty (60) minutes on drug use. Training shall incorporate physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of drugs. Employers shall retain records, to include attendee's signatures, dates and training topics, to document supervisory participation in training.

(h) Drug-free workplace program compliance and revocation.

(i) An employer shall maintain compliance with their drug-free workplace program during the time period for the discount program.

(ii) An employer shall be responsible for document retention to substantiate compliance with the substance abuse testing provisions in the employer's approved annual drug-free workplace program. An employer shall preserve such records for a period of four (4) years after the calendar year in which the respective program was approved by the Division.

(iii) Pursuant to W.S. § 27-14-803 and in accordance with Chapter 2, Section 5, Audits, the Division may investigate and examine the employer's documentation as pertains to compliance with their approved drug-free workplace program(s). If the Division finds the employer to be in noncompliance after reviewing the relevant documentation, participation in the employer base rate discount program for alcohol and drug testing will be revoked. Employers shall have their premium rates adjusted to the industry classification base rate as adjusted by the experience rating.

(iv) The Drug and Alcohol Testing Program; Employer Discount shall be in effect each year unless an audit is conducted and the employer is found to be out of compliance with any of the program requirements. If the preceding occurs, the employer shall be removed from the program until such time as the employer reapplies for the program and all program requirements have been met.

Section 10. Health and Safety Consultation Employer Discount Program.

(a) Pursuant to W.S. § 27-14-201(o) employers may receive a premium base rate discount, as determined through the Division's premium rate setting process for its employment classification, by participating in a health and safety consultation program.

(b) Applications to participate in this program may be submitted to the Division at any time and upon approval premium base rate discounts shall be implemented in the subsequent calendar quarter.

(c) Employers must have at least one (1) employee to participate in this program, establish and maintain certificates of good standing with Wyoming Workers' Compensation, Unemployment Insurance, and the Secretary of State. Certificates of good standing shall be reviewed on a quarterly basis to ensure compliance. If certificates of good standing cannot be established and maintained by the employer, that employer shall be disqualified from this program until such time as the employer reapplies for the program and all program requirements have been

met.

(d) Pursuant to W.S. § 27-14-803 and in accordance with Chapter 2, Section 5. Audits, the Division may investigate and examine the employer's documentation as pertains to compliance with its approved health and consultation safety program(s). If the Division finds the employer to be in noncompliance after reviewing the relevant documentation, participation in the health and safety consultation employer discount program may be revoked or reduced to a lower tier.

(e) Health and Safety Consultation Employer Discount Program premium base rate discounts shall be applied on a quarterly basis and be in effect for up to three (3) years unless an audit is conducted and the employer is found to be out of compliance with any of the following; has experienced a fatality or catastrophe, a willful or repeat serious offense. If the preceding occurs, the employer shall be removed from the program until such time as the employer reapplies for the program and all program requirements have been met.

(f) Discounts shall be calculated as follows:

(i) An employer may be eligible to participate in the Tier 1 premium base rate discount of three percent (3%) if that employer completes a full service, onsite survey and abates all serious hazards. The survey shall be conducted by Wyoming OSHA Consultation, the State Mine Inspector's Office or a qualified third-party health and safety professional approved by the Department.

(ii) An employer may be eligible to participate in the Tier 2 premium base rate discount of five percent (5%) if that employer is approved for and completes all requirements of the Tier 2 health and safety program as prescribed by the Department. Review of the Tier 2 requirements shall be conducted by Wyoming OSHA Consultation, the State Mine Inspector's Office or a qualified third-party health and safety professional approved by the Department.

(iii) An employer may be eligible to participate in the Tier 3 premium base rate discount of seven percent (7%) if that employer is approved for and completes all requirements of the Tier 3 health and safety program as prescribed by the Department. Review of the Tier 3 requirements shall be conducted by Wyoming OSHA Consultation, the State Mine Inspector's Office or a qualified third-party health and safety professional approved by the Department.

(iv) An employer may be eligible to participate in the Tier 4 premium base rate discount of ten percent (10%) if that employer is approved for and completes all requirements of the Tier 4 health and safety program as prescribed by the Department. Review of the Tier 4 requirements shall be conducted by Wyoming OSHA Consultation, the State Mine Inspector's Office or a qualified third-party health and safety professional approved by the Department.

Section 11. Specifically Enumerated Volunteers; Elected, County or Local Officials; School-to-Careers Program.

(a) A governing body's election of coverage shall be on forms provided by the Division containing information as requested by the Division. W.S. § 27-14-108(e)(ix).

(b) The school-to-careers program applies to those employers and participants who are not eligible for coverage under a qualifying employer-employee relationship. Participants under this

program are not eligible for temporary total wage benefits under the Act.

(c) If the school district or community college district chooses to make the reports and payments for the employer, the wage calculation will be based on the presumed pay of the participant. The premium rate used to calculate the payment will be that of the specific school district or community college district making the report. All claims will be reported and processed against the reporting school district or community college district.

(d) If an employer-employee relationship exists, the participant will be treated as any other employee under the Act.

Section 12. Exclusions.

(a) Employment under the Act does not include services performed by a licensed real estate broker or sales person receiving as sole compensation a commission based on the sale or rental of real estate.

(b) Private Schools - NAICS 519 and 611. Any private entity classified under NAICS 519 and 611 Education Services, is excluded from coverage under the Act, unless an election of coverage is made as provided in W.S. § 27-14-108(j).

Section 13. Concurrent Coverage.

(a) Employers covered under the Act having employees working in a state that requires workers' compensation coverage in addition to the employer's Wyoming coverage, must submit written proof of coverage from the other state. The employer may then submit its payroll report, which lists only the wages paid for hours worked in Wyoming. The proof of coverage shall be submitted on forms required by the Division. When the Division receives proof of coverage, it will not require premium payments and coverage in Wyoming during the time the employee is working and being covered in another state.

(b) The employer and employee must notify the Division of any claim for benefits filed in another state for any injury reported in Wyoming. An employer's experience rating to be computed by using three (3) years (or maximum available portions thereof) of claims experience for each eligible employer.

(c) Three (3) years claims experience shall begin July 1 of the fifth (5th) calendar year prior to the rating year and end June 30 of the second (2nd) calendar year prior to the rating year.

Section 14. Employer Reimbursements or Allowances for Employee Business Expenses.

(a) Employer reimbursements or allowances of employee business expenses are not considered wages gross earnings if the employer has appropriate records to substantiate that an "accountable plan" has been established and implemented as follows:

(i) There must be a business connection for expenses incurred while performing services as an employee, officer or member of the employer.

(ii) The expense must be reasonable.

(iii) There must be actual accounting for the expense, by the employer and the employee, officer or member.

(A) For travel expenses reimbursed at established federal per diem rates, documentation of the trip will be considered actual accounting.

(B) For business entities with federally recognized expense allowances, the U. S. Treasury allowance will be considered actual accounting.

(iv) All excess reimbursement or allowance must be repaid by the employee, officer or member to the employer within one-hundred and twenty (120) days after the expense was paid or incurred.

(b) Payments that do not include all of the above or exceed federal per diem or federal allowances will be deemed to be wages gross earnings.

Section 15. Glossary of Terminology

(a) Actual (A) Losses

The incurred loss amounts for workers' compensation claims submitted by the employer, which have event dates in the three (3) year window of time used for experience rating. The losses will include the case reserves as of the evaluation date set by the plan, and will have applicable plan minimums and caps applied for use in the experience rating formula.

(b) Actual Excess (Ae) Losses

The Actual Excess Losses for each claim represents the more random and less controllable portion of the claim. For each claim, the Actual Excess Loss is computed as the difference between the Total Actual Loss for the claim and Actual Primary Loss for the claim.

(c) Actual Primary (Ap) Losses

The experience rating plan segregates the Total Actual Loss on each claim into two components – primary and excess. The Actual Primary Loss for each claim represents the more predictive and controllable portion of the claim. The Actual Primary Loss value for each claim is obtained by the formula: Actual Primary Loss = Total Actual Loss if Total Loss is less than ten thousand dollars (\$10,000.00); = ten thousand dollars (\$10,000.00) if Total Loss is equal to or greater than ten thousand dollars (\$10,000.00).

(d) Credibility (Z) Value

A measure of the predictive value in a given application that the actuary attaches to a particular set of data, such as the claims experience used for determining experience modification ratings.

(e) Credibility Excess (Ze) Value

The Credibility Excess, or Ze Value, is the weight given to the risk's Actual Excess Losses relative to the average Expected Excess Losses for a similarly-sized risk in the same standard classification(s). It is intended to reflect the actuarial predictability of a risk's excess loss

experience. The larger the risk is, the greater the weight is given to the excess loss experience and the greater the Z_e . The excess experience of very small experience rated risks has essentially no predictive value and, as a result, the Z_e for these risks may be zero (0). The complement of the Z_e , $(1 - Z_e)$, is the weight given to the risk's Expected Excess Losses. The Z_e Value varies with a risk's Expected Losses.

(f) Credibility Primary (Z_p) Value

The Credibility Primary (Z_p) Value, is the weight given to the risk's Actual Primary Losses relative to the average Expected Primary Losses for a similarly-sized risk in the same standard classification(s). It is intended to reflect the actuarial predictability of a risk's primary loss experience. The larger the risk is, the greater the weight is given to the primary loss experience and the greater the Z_p . The complement of the Z_p value $(1 - Z_p)$, is the weight given to the risk's Expected Primary Losses. The Z_p Value varies with a risk's Expected Losses.

(g) Expected (E) Losses (also referred to as Total Expected Loss)

The Expected Losses are the basis to which actual losses are compared in the experience rating formula. They are derived for each classification as the product of the payroll for the classification and the expected loss rate applicable to the classification. They are also computed as the sum of the Expected Primary Losses and the Expected Excess Losses. For other than per capita classifications, this product is then divided by one hundred (100). The Expected Loss Rate for a classification is the average rate of losses per one hundred dollars (\$100.00) of payroll that is expected for the classification during an experience rating period.

(h) Expected Excess (Ee) Losses

The Expected Excess Losses are the portion of the Expected Losses that is considered excess, and are used in the experience rating formula in combination with the Actual Excess Losses. The Expected Excess Losses for a classification are determined by multiplying the Excess Expected Loss Rate for the classification per \$100 of employer payroll for the classification. The total Expected Excess Losses are the sum of the Expected Excess Losses over all classifications.

(i) Expected Primary (Ep) Losses

The Expected Primary Losses are the portion of the Expected Losses that is considered primary, and are used in the experience rating formula in combination with the Actual Primary Losses. The Expected Primary Losses for a classification are determined by multiplying the Primary Expected Loss Rate for the classification by the employer payroll for the classification. The total Expected Primary Losses are the sum of the Expected Primary Losses over all classifications.

(j) Multiple Claim Occurrence (MCO)

Claims with multiple claimants or catastrophe claims combines claims together which then have a \$500,000.00 limit (2 X the Maximum Single Loss Amount of \$250,000.00).

(k) Multiple Single Loss Amount

Maximum Single Loss is the maximum limit of incurred loss, not to exceed the state accident limit of \$250,000.00.

(l) Split Plan

A method for calculating EMRs that balances the effect of more frequent losses that fall below a "split point" (a loss amount determined by the state based on Actuary recommendations),

with more severe losses that occur above the split point.

(m) **Split Point**

A loss amount determined by the state based on actuarial recommendations. Losses falling below the split point are considered Primary Losses. Any remaining losses above the Primary Losses and below the Maximum Single Loss Amount are considered the Excess Losses.

(n) **Maximum Loss Cap**

The Maximum Loss Cap is the state's accident limit per a single claim or two (2) times the state's accident limit for multiple claimants or catastrophe.

CHAPTER 2

EMPLOYER COVERAGE, COMPLIANCE, AND DISCOUNT PROGRAMS

Section 1. General.

(a) Application for Determination of Coverage. No employer subject to the Act defined in W.S. § 27-14-101 shall commence business or engage in any work in Wyoming without applying for coverage and receiving a statement of coverage from the Division. The application shall supply such information as the Division requests regarding the nature, location, extent and duration of the intended work. Employers determined by the Division to be non-resident employers must comply with the bond or security requirements of W.S. §§ 27-1-106 and 27-14-302; a non-resident employer is that employer defined in W.S. § 27-14-102(a)(xiii).

(b) Proof of Coverage (POC) Certificate.

(i) For the purposes of W.S. § 27-14-306 a POC certificate shall further contain all of the following:

(A) The applicable time-frame of the certificate;

(B) A statement as to the applicability of insurance coverage for employees of the nonresident employer, to specifically address employees that are Wyoming residents.

(i) Failure to provide or maintain a POC certificate, or provide Workers' Compensation coverage for all employees engaged in extra hazardous employment, will require the nonresident employer to provide Wyoming Workers' Compensation coverage.

(c) Employer Number; Corporations. Every employer participating under the Act shall be assigned an employer number by the Division. Employers who are incorporated must provide a copy of the certificate of authority issued by the Secretary of State of Wyoming authorizing the employer to do business in the state of Wyoming. A copy of the corporate minutes that identifies the corporate officers of the corporation must also be filed with the Division.

(d) Reports When no Premiums Have Accrued. Every employer subject to the Act is required to send in the regular reports even though no premiums have accrued with respect to a particular reporting period. Employers shall file reports for such period and shall continue to file such reports until the Division has received and approved a notification to discontinue filing reports.

Section 2. Successor Employer.

(a) For purposes of W.S. § 27-14-207(b), "account" includes: premium rate, experience modification rating, premium credit program, safety discount program, drug and alcohol testing discount program, health and safety consultation discount program, and outstanding accounts receivable including past due or delinquent premium, interest, penalties, small employer group credit, and claims reimbursement, until recalculated for the subsequent rate year.

(b) For purposes of W.S. § 27-14-207(c), "account" includes: premium rate, experience modification rating, premium credit program, safety discount program, drug and alcohol testing discount program, health and safety consultation discount program, and small employer group credit, until recalculated for the subsequent rate year.

Section 3. Experience Rating.

(a) One (1) experience ~~rating~~ modification rating shall be assigned to each employer number for those eligible employers under the Act. An employer who elects to establish a separate employer number for each separate legal entity of the employer's businesses shall be assigned an experience rating for each employer number.

(b) An employer's experience modification rating (whereby, hereafter shall be known as EMR) is computed by using three (3) years claims experience [or maximum available portions of three (3) years] for each eligible employer.

(i) ~~Three (3) years claims experience shall begin July 1 of the fifth (5th) calendar year prior to the rating year and end June 30 of the second (2nd) calendar year prior to the rating year for public employers; three (3) years claims experience shall begin January 1 of the fifth (5th) calendar year prior to the rating year and end December 31 of the second (2nd) calendar year prior to the rating year for private employers. Private sector employers will receive an EMR based on three (3) years claims experience effective January 1 of their fifth (5th) calendar year.~~

(ii) Public sector employers will receive an EMR based on three (3) years claims experience effective July 1 of their sixth (6th) fiscal year.

(c) Pursuant to W.S. § 27-14-207(j), the out-of-state employer must direct their insurance company to submit their EMR history directly to the Division.

(i) If an out-of-state employer expanding or moving their operations to Wyoming has previously been self-insured, and does not have any experience history available from a third party workers' insurance company, they will be assigned an EMR of one (1) and will be charged at the industry base rate for their classification.

(ii) The Division will use employers experience history to calculate the EMR according to the current EMR split-plan calculation.

(d) For an employer having less than one (1) full year (private employers follow a fiscal year; public employers follow a calendar year) of premium obligation during the ~~experience rating~~ EMR period, the employer's ~~experience rating~~ EMR will be equal to a modification of one (1).

(e) For an employer having greater than one (1) full year of premium obligation during the ~~experience rating~~ EMR period, but less than three (3) full years of premium obligation, the actual premium obligation will be based on the employer's actual experience as recorded by the Division in the quarterly or monthly reports in the premium year.

(f) The Division, through the qualified actuary, as defined by W.S. § 27-14-201 (b), shall annually determine key parameters of the ~~experience rating~~ EMR plan to meet the requirements of W.S. § 27-14-201(d). The Division will notify each employer who qualifies for an EMR of the key parameters (i, ii, iii) of this sub-section on the yearly EMR notice. The key parameters will also be published on the Division website for any employer to inspect.

(i) Split Point – The claim cost amount at which an employer's ~~experience rate~~ EMR moves from the measure of frequency to the measure of severity. The Division will apply a

plus or minus cap of 15% (percent) to the employer's EMR beginning with rate year 2017 and to apply to rate year 2018, excluding Group I.

(ii) Group Premium Rate – There will be five (5) groups for premium bands. Each Group Premium Rate will have a credit/debit maximum percent amount to affect the employer's Experience Modification Rate (EMR). At no time shall this exceed +/- eighty-five percent (85%). Individual employer groups are based on the amount of premium over a three (3) year period and the actuarial process.

- Group 1 not to exceed +/- 20%
- Group 2 not to exceed +/- 25%
- Group 3 not to exceed +/- 45%
- Group 4 not to exceed +/- 65%
- Group 5 not to exceed +/- 85%

(iii) Chargeable minimum and maximum – There will be a claim cost minimum on medical only cases, below which are not ratable to the employer and will not affect the EMR. There will also be a claim cost maximum at which point claim cost will not be above the maximum single loss are not ratable and will not affect the EMR.

(g) For employers in Group I, the experience adjustment for claims occurring within the three (3) year experience rating EMR period shall be as follows:

(i) Zero percent (0%) if the employer's account has been charged with one (1) claim which exceeds the annual minimum claim cost amount.

(ii) Twenty percent (20%) penalty if the employer's account has been charged with two (2) or more claims which exceed the annual minimum claims cost amount.

(iii) Twenty percent (20%) credit if the employer's account has not been charged with a claim exceeding the annual claims cost amount.

(h) The formula for computing the split plan experience modification rating (EMR) is defined below, with each term defined in Appendix A Section 15, is as follows:

$$1 + \left((Z_p) \frac{A_p - E_p}{E} \right) + \left((Z_e) \frac{A_e - E_e}{E} \right) = \text{Modification (EMR)}$$

- Where:
- Zp = Credibility Primary Value
 - Ap = Actual Primary Losses
 - Ep = Expected Primary Losses
 - Ze = Credibility Excess Value
 - Ae = Actual Excess Losses

Ee = Expected Excess Losses
E = Expected Losses
(See Glossary of Terminology in ~~Appendix A~~Section 15.)

(i) ~~Contesting Experience Rating~~ Contesting Experience Modification Rating. Any employer may contest the annual ~~experience rating~~ EMR or case reserve amounts assigned by the Division. Contest shall be made by filing a written objection with the Division within thirty (30) days after notification by the Division as provided in W.S. § 27-14-201(h). The Division shall resolve the matter administratively within forty-five (45) days after the filing of the objection. If the matter is not resolved within forty-five (45) days then the Division shall refer the objection to an independent hearing officer appointed for such purpose, pursuant to these rules and the Wyoming Administrative Procedure Act.

(j) Contesting Chargeability of Claims Costs. An employer may apply for non-chargeability of claims costs pursuant to W.S. § 27-14-201(d).

(i) An employer who is current on premium payments required by the act may contest the chargeability of claims costs by filing a written application with the Division on a form supplied by the Division.

(ii) The application to determine chargeability must be filed no later than one (1) year after the determination of compensability for an injury occurring on or after July 1, 2015.

(iii) Upon receipt of said application, the Division shall schedule a time and date for a hearing. The employer shall be notified of the time and date of the hearing.

(iv) The hearing shall be conducted pursuant to the Division's Rules, Chapter 1, Section 54 or <http://soswy.state.wy.us/Rules/RULES/8192.pdf>
<https://rules.wyo.gov/Search.aspx?mode=1>

(v) The hearing shall be conducted by a panel from the Division, including the Administrator of the Workers' Compensation Division, the Deputy Administrator of Employer Services, the Deputy Administrator of Claims, the District Manager from the appropriate district, the claims analyst assigned to the underlying claim, a representative from OSHA, and a representative from the Attorney General's Office.

(vi) The employer will present its case to the panel after which the panel shall take the issue under advisement and issue a written, final determination.

(vii) If an employer fails to appear for the hearing, the initial determination on chargeability will become the final agency action.

Section 4. Classifications. The employer shall provide a true and accurate description of its business operations prior to commencing operations, which require coverage under the Act for eligible workers in the state of Wyoming. The employer is required to notify the Division in writing of any change in business operations, which affect the industrial classification of the business for purposes of workers' compensation. The employer shall grant reasonable access to the Division's representative to verify information provided by the employer with respect to the business operations.

(a) Classification Procedures. The Division will assign an industrial classification or

classifications pursuant to the North American Industry Classification System (NAICS) codes provided by the Federal Bureau of Labor Statistics via the Internet or in a printed manual dated 2002 or later. The industrial classification(s) assigned will be that which best describes the primary business of the employer. Businesses conducted at one or more locations which normally prevail in the primary industrial classification will not be assigned separate classifications for supporting operations, with certain specific standard exceptions for clerical office occupations, inside sales occupations, outside sales occupations, or temporary help occupations.

(b) **Classification Revisions.** The Division shall correct industrial classifications which it determines to be incorrect. The Division shall give the employer written notification of any change in industrial classification and such changes shall become effective on the first day of the reporting period following the reporting period in which the Division gives written notification.

(c) **Contesting Classification.** Any employer may contest the industrial classification assigned by the Division. Contest shall be made by written objection to the Division within thirty (30) days of the employer's notification of the classification assigned by the Division. The Division shall resolve the matter administratively within forty-five (45) days or refer the objection to an independent hearing officer appointed for such purpose, pursuant to the Wyoming Administrative Procedure Act.

Section 5. Audits. Investigation and examination of an employer's records may be conducted in accordance with W.S. § 27-14-803. The Division may examine books, accounts, payrolls or the business operation of any employer to determine if the employer has engaged in activity in violation of the Act, to verify information provided to the Division by the employer, and for the administration of this Act. The employer shall grant reasonable access to the Division's representative to examine information pertinent to the employers' business operations.

(a) **Audit Procedures.** The Division's representative will conduct an audit and review the preliminary findings with the employer. These audit findings will then undergo final review by the Division with correction of any findings, which it determines to be incorrect. The Division will then issue a Final Audit Determination Notice to the employer upon completion of the audit.

(i) Any unreported payments made to any individual, as found in an audit of an employer's records, shall be presumed to be unreported gross wages unless documentation is provided by the employer that the individual meets the statutory requirements of W.S. 27-14-102(a)(xxiii) as an independent contractor. The burden is upon the employer to provide such documentation.

(b) **Contesting Audit.** Any employer may contest the audit conducted by the Division. Contest shall be made by filing a written objection with the Division within thirty (30) days after notification by the Division as provided by the Final Audit Determination Notice. The Division shall resolve the matter administratively within forty-five (45) days or refer the objection to an independent hearing officer appointed for such purpose, pursuant to the Wyoming Administrative Procedure Act.

Section 6. Proceedings for Forfeiture of Non-Resident Employers' Surety Bond. Prior to proceedings for forfeiture of a bond by a non-resident employer, the Division shall notify the employer in writing of the events triggering a possible forfeiture, the amount of the bond to be forfeited, and the employer's right to avoid forfeiture by paying an equivalent amount to the Division within thirty (30) days. The amount to be forfeited shall be the sum of the following:

(a) The remaining reserved amounts for compensable injuries to the employer's workers less the cumulative premiums paid by the employer;

(b) All unpaid premiums, penalties and interest accruing as a result of late payment or non-payment of said premiums, and reasonable auditing expenses; and,

(c) Any and all amounts due as a result of unpaid wages as determined by the Labor Standards Program in the Department of Workforce Services.

Section 7. Deductible Program.

(a) Pursuant to W.S. § 27-14-201(t)(i), an employer may apply to participate in a deductible program. Employers must apply for the deductible program in writing on a form prescribed by the Division. Terms of the deductible program shall be defined by contract entered into between the employer and Division.

(b) The Division may require applying employers to undergo a financial audit to ensure financial stability. The audit may include a credit check and review of company financial reports. The Division shall analyze each applicant based on risk analysis and sound business practices. The Division may refuse any applicant into the deductible program if it determines that the proposed contract does not represent a sound business practice or decision.

(c) For any employer enrolled in the deductible program, the Division will process and pay claims in accordance with the Wyoming Worker's Compensation Act. The employer shall reimburse the Division for all costs paid by the Division on individual claims up to the amount of the contractually agreed deductible.

(d) The deductible levels available are: \$1,000.00, \$5,000.00, \$10,000.00, \$25,000.00, \$50,000.00, \$75,000.00, or \$100,000.00. The maximum deductible level offered to an employer by the Division shall not be more than fifty percent (50%) of the employer's standard premium.

(e) The amount of the contractually agreed upon deductible will be applied to the employer's industry base rate before any discounts under, Sections 8-10, as seen below, are calculated and applied.

Section 8. Safety Program; Employer Discount.

(a) Pursuant to W.S. § 27-14-201(o) employers may receive a premium base rate discount, as determined through the Division's premium rate setting process for its employment classification, by participating in a safety program.

(b) Employers must have at least one (1) employee to participate in the program, establish and maintain certificates of good standing with Wyoming Workers' Compensation, Unemployment Insurance, and the Secretary of State. Certificates of good standing shall be reviewed on a quarterly basis to ensure compliance. If certificates of good standing cannot be established and maintained by the employer, that employer shall be disqualified from the program until such time as the employer reapplies for the program and all program requirements have been met.

(c) Pursuant to W.S. § 27-14-803 and in accordance with Chapter 2, Section 5. Audits,

the Division may investigate and examine the employer's documentation as pertains to compliance with its approved health and safety program(s). If the Division finds the employer to be in noncompliance after reviewing the relevant documentation, participation in the employer base rate discount program may be revoked or reduced.

(d) This program shall comply with some or all of the following provisions dependent on the level of discount participation:

(i) a formal declaration, in writing of a company-wide loss prevention and loss control policy; coordinator;

(ii) a formal creation of a risk assessment (safety) committee or rules;

(iii) clearly defined and posted loss prevention (accident prevention);

(iv) all employees have undergone hazard assessment training;

(v) a substance abuse training plan;

(vi) written policies/procedures on claims management; and

(vii) written policies and procedures establishing a drug-free workplace, which may include an employee assistance program to assist employees with alcohol or other drug problems. These policies shall be posted in a conspicuous place where they may be regularly viewed by employees:

(A) The policy shall:

(I) establish that the unlawful use, possession, transfer or sale of illegal drugs or controlled substances and the misuse of alcohol by employees during work hours are prohibited;

(II) provide an explanation of the consequences of violation of the employer's drug-free policy, which may include a referral for therapeutic help, discipline and/or discharge; and,

(III) encourage the designation of totally or partially smoke free workplace.

(B) Employers shall post a list of community resources that provide substance abuse treatment and prevention services in a conspicuous place where they may be regularly viewed by employees. The Wyoming Department of Health shall provide the list on the website of the Substance Abuse Division or in hard copy to employers requesting the list.

(C) Employers are not required to pay the costs of treatment or any other intervention to qualify for the safety discount program.

(D) Employers enrolled in an approved safety discount program on the effective date of these rules shall have one year from the effective date of these rules to comply with the drug-free workplace requirements.

(E) Employers enrolling on or after the effective date of these rules shall comply with the drug-free workplace requirements upon enrollment.

(e) Applications to participate in this program may be submitted to the Division at any time, and upon approval, premium base rate discounts shall be implemented in the subsequent calendar quarter.

(i) To achieve a three and one-third percent (3.33%) ~~reduction~~discount to its premium base rate, an employer must have a documented health and safety program; and,

(ii) To achieve a six and two-third percent (6.66%) ~~reduction~~discount to its premium base rate, an employer must have an established Health and Safety committee and documented monthly safety meetings; and,

(iii) To receive a ten percent (10%) discount, an employer must achieve and maintain a loss ratio of equal to or less than ten percent (10%).

(f) Premium base rate discount renewals shall be in effect each year only in the event that the owner or designated officer signs and submits an affidavit attesting to the fact that the health and safety program has been continually utilized for the previous year. If an audit is conducted and the employer is found to be out of compliance with any of the previous requirements or have experienced a fatality, catastrophe, willful or repeat serious offense, the employer shall be removed from the program until such time as the employer reapplies for the program and all program requirements have been met.

(g) Safety Incentive. To be eligible for the safety discount, an employer must have submitted its payroll reports and paid full premium for all prior reporting periods.

Section 9. Drug and Alcohol Testing Program; Employer Discount

(a) Pursuant to W.S. § 27-14-201(o) employers may receive a premium base rate discount, as determined through the Division's premium rate setting process for their employment classification, by participating in a drug and alcohol testing program approved by the Division.

(b) Employers must have at least one (1) employee to participate in the program, establish and maintain certificates of good standing with Wyoming Workers' Compensation, Unemployment Insurance, and the Secretary of State. Certificates of good standing shall be reviewed on a quarterly basis to ensure compliance. If certificates of good standing cannot be established and maintained by the employer, that employer shall be removed from the program until such time as the employer reapplies for the program and all program requirements have been met.

(c) Applications to participate in the drug and alcohol testing program may be submitted to the Division at any time and, upon approval, premium base rate discounts shall be implemented in the subsequent calendar quarter.

(d) Upon receipt of a completed application, the Division shall review the application for compliance with these rules and either approve or deny the application. The Division shall deny an application if an applicant fails to meet all of the requirements of these rules. The Division shall also refuse to renew an application if the employer no longer meets or has violated any provision of these rules.

(e) After approval or renewal, the applicable premium base rate discount shall be applied to the following four (4) calendar quarters unless revoked pursuant to these rules.

(f) Applications are approved for four (4) calendar quarters and shall be submitted annually.

(g) Applications shall include the employer's name, printed name and title of the officer/owner, signature of the officer/owner, and date attesting the information contained in the application is a true and factual representation of the drug-free workplace program. A drug-free workplace program shall contain all of the following:

(i) The written policy, which shall include all of the following:

(A) A statement providing for inclusion of all Workers' Compensation covered employees in the substance abuse testing program.

(B) A statement of required types of substance abuse testing.

(C) A statement of actions the employer may take against an employee or job applicant on the basis of a positive confirmed test result.

(D) A statement of consequences of an employee's or job applicant's refusal to submit to a drug test.

(E) A general confidentiality statement.

(F) A statement advising employee who receives a positive confirmed test result that he or she may contest or explain the result to the employer within 5 working days after written notification of the test result.

(G) A statement informing an employee or job applicant of the federal Drug-Free Workplace Act, if applicable.

(H) A statement affording provision of sixty (60) days notice prior to implementation of substance abuse testing.

(I) A statement that substance abuse testing is required to be on vacancy announcements for which testing is required.

(J) A statement that notification of substance abuse testing is posted in an appropriate and conspicuous location on employer's premises.

(K) A statement informing employees and job applicants that copies of the policy are available in the employer's personnel office or other suitable location.

(ii) Substance abuse testing, to the extent permitted by Federal Codes, Wyoming State Statutes, and Local Ordinances, which shall include all of the following:

(A) Pre-employment, random, reasonable suspicion and post-accident testing.

(B) Drug and alcohol testing protocols as specified in Chapter 10, Section 2 shall apply to all random, reasonable suspicion and post-accident testing.

(I) Pre-employment substance abuse testing is exempt from the protocol as specified in Chapter 10, Section 2 and alcohol testing is not required for job applicants.

(II) For random and reasonable suspicion testing, a commercially available urine or hair follicle test consisting of synthetic amphetamines; amphetamines; synthetic marijuana “spice”; marijuana; cocaine; opiates and PCP with specific gravity incorporating Substance Abuse and Mental Health Services Administration (SAMHSA) cutoff levels shall be utilized by a Third Party Administrator. A negative test shall require no further testing unless use of another drug not included on the on-site test is suspected, in such case the sample would be processed as if it were a positive on-site test. A positive drug or low specific gravity onsite urine test shall be immediately processed pursuant to Chapter 10, Section 2. Protocol shall require transfer of the specimen in front of the employee to a container supplied by a certified laboratory, and sealed per instruction with the employee initialing the evidence seal.

(III) Post-accident testing shall be exclusively processed per Chapter 10, Section 2 with strong recommendation that the specimen be a blood sample.

(C) To the extent permitted by Federal Codes, State Statutes, and Local ordinances, random testing shall be conducted, at a minimum, on twenty percent (20%) of the average staff on an annualized basis.

(iii) Resources available for employee assistance.

(A) To include either a statement advising employee of an Employee Assistance Program (EAP) or a statement advising employee of employer’s resource file of assistance programs and other persons, entities, or organizations designed to assist employees with personal or behavior problems.

(iv) Employee education

(A) The employer shall provide at least one (1) hour of employee substance abuse education training per year. Employers shall retain records, to include attendee’s signatures, dates and training topics, to document employee participation in education.

(v) Supervisor training

(A) The employer shall provide at least two (2) hours of substance abuse education training per year to all supervisors. Supervisors shall receive training to encompass at least sixty (60) minutes on alcohol misuse and at least sixty (60) minutes on drug use. Training shall incorporate physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of drugs. Employers shall retain records, to include attendee’s signatures, dates and training topics, to document supervisory participation in training.

(h) Drug-free workplace program compliance and revocation.

(i) An employer shall maintain compliance with their drug-free workplace program during the time period for the discount program.

(ii) An employer shall be responsible for document retention to substantiate compliance with the substance abuse testing provisions in the employer's approved annual drug-free workplace program. An employer shall preserve such records for a period of four (4) years after the calendar year in which the respective program was approved by the Division.

(iii) Pursuant to W.S. § 27-14-803 and in accordance with Chapter 2, Section 5, Audits, the Division may investigate and examine the employer's documentation as pertains to compliance with their approved drug-free workplace program(s). If the Division finds the employer to be in noncompliance after reviewing the relevant documentation, participation in the employer base rate discount program for alcohol and drug testing will be revoked. Employers shall have their premium rates adjusted to the industry classification base rate as adjusted by the experience rating.

(iv) The Drug and Alcohol Testing Program; Employer Discount shall be in effect each year unless an audit is conducted and the employer is found to be out of compliance with any of the program requirements. If the preceding occurs, the employer shall be removed from the program until such time as the employer reapplies for the program and all program requirements have been met.

Section 10. Health and Safety Consultation Employer Discount Program.

(a) Pursuant to W.S. § 27-14-201(o) employers may receive a premium base rate discount, as determined through the Division's premium rate setting process for its employment classification, by participating in a health and safety consultation program.

(b) Applications to participate in this program may be submitted to the Division at any time and upon approval premium base rate discounts shall be implemented in the subsequent calendar quarter.

(c) Employers must have at least one (1) employee to participate in this program, establish and maintain certificates of good standing with Wyoming Workers' Compensation, Unemployment Insurance, and the Secretary of State. Certificates of good standing shall be reviewed on a quarterly basis to ensure compliance. If certificates of good standing cannot be established and maintained by the employer, that employer shall be disqualified from this program until such time as the employer reapplies for the program and all program requirements have been met.

(d) Pursuant to W.S. § 27-14-803 and in accordance with Chapter 2, Section 5. Audits, the Division may investigate and examine the employer's documentation as pertains to compliance with its approved health and consultation safety program(s). If the Division finds the employer to be in noncompliance after reviewing the relevant documentation, participation in the health and safety consultation employer discount program may be revoked or reduced to a lower tier.

(e) Health and Safety Consultation Employer Discount Program premium base rate discounts shall be applied on a quarterly basis and be in effect for up to three (3) years unless an audit is conducted and the employer is found to be out of compliance with any of the following; has experienced a fatality or catastrophe, a willful or repeat serious offense. If the preceding occurs, the employer shall be removed from the program until such time as the employer reapplies for the program and all program requirements have been met.

(f) Discounts shall be calculated as follows:

(i) An employer may be eligible to participate in the Tier 1 premium base rate discount of three percent (3%) if that employer completes a full service, onsite survey and abates all serious hazards. The survey shall be conducted by Wyoming OSHA Consultation, the State Mine Inspector's Office or a qualified third-party health and safety professional approved by the Department.

(ii) An employer may be eligible to participate in the Tier 2 premium base rate discount of five percent (5%) if that employer is approved for and completes all requirements of the Tier 2 health and safety program as prescribed by the Department. Review of the Tier 2 requirements shall be conducted by Wyoming OSHA Consultation, the State Mine Inspector's Office or a qualified third-party health and safety professional approved by the Department.

(iii) An employer may be eligible to participate in the Tier 3 premium base rate discount of seven percent (7%) if that employer is approved for and completes all requirements of the Tier 3 health and safety program as prescribed by the Department. Review of the Tier 3 requirements shall be conducted by Wyoming OSHA Consultation, the State Mine Inspector's Office or a qualified third-party health and safety professional approved by the Department.

(iv) An employer may be eligible to participate in the Tier 4 premium base rate discount of ten percent (10%) if that employer is approved for and completes all requirements of the Tier 4 health and safety program as prescribed by the Department. Review of the Tier 4 requirements shall be conducted by Wyoming OSHA Consultation, the State Mine Inspector's Office or a qualified third-party health and safety professional approved by the Department.

Section 11. Specifically Enumerated Volunteers; Elected, County or Local Officials; School-to-Careers Program.

(a) A governing body's election of coverage shall be on forms provided by the Division containing information as requested by the Division. W.S. § 27-14-108(e)(ix).

(b) The school-to-careers program applies to those employers and participants who are not eligible for coverage under a qualifying employer-employee relationship. Participants under this program are not eligible for temporary total wage benefits under the Act.

(c) If the school district or community college district chooses to make the reports and payments for the employer, the wage calculation will be based on the presumed pay of the participant. The premium rate used to calculate the payment will be that of the specific school district or community college district making the report. All claims will be reported and processed against the reporting school district or community college district.

(d) If an employer-employee relationship exists, the participant will be treated as any other employee under the Act.

Section 12. Exclusions.

(a) Employment under the Act does not include services performed by a licensed real estate broker or sales person receiving as sole compensation a commission based on the sale or rental of real estate.

(b) Private Schools - NAICS 519 and 611. Any private entity classified under NAICS 519 and 611 Education Services, is excluded from coverage under the Act, unless an election of coverage is made as provided in W.S. § 27-14-108(j).

Section 13. Concurrent Coverage.

(a) Employers covered under the Act having employees working in a state that requires workers' compensation coverage in addition to the employer's Wyoming coverage, must submit written proof of coverage from the other state. The employer may then submit its payroll report, which lists only the wages paid for hours worked in Wyoming. The proof of coverage shall be submitted on forms required by the Division. When the Division receives proof of coverage, it will not require premium payments and coverage in Wyoming during the time the employee is working and being covered in another state.

(b) The employer and employee must notify the Division of any claim for benefits filed in another state for any injury reported in Wyoming. An employer's experience rating to be computed by using three (3) years (or maximum available portions thereof) of claims experience for each eligible employer.

(c) Three (3) years claims experience shall begin July 1 of the fifth (5th) calendar year prior to the rating year and end June 30 of the second (2nd) calendar year prior to the rating year.

Section 14. Employer Reimbursements or Allowances for Employee Business Expenses.

(a) Employer reimbursements or allowances of employee business expenses are not considered wages gross earnings if the employer has appropriate records to substantiate that an "accountable plan" has been established and implemented as follows:

(i) There must be a business connection for expenses incurred while performing services as an employee, officer or member of the employer.

(ii) The expense must be reasonable.

(iii) There must be actual accounting for the expense, by the employer and the employee, officer or member.

(A) For travel expenses reimbursed at established federal per diem rates, documentation of the trip will be considered actual accounting.

(B) For business entities with federally recognized expense allowances, the U. S. Treasury allowance will be considered actual accounting.

(iv) All excess reimbursement or allowance must be repaid by the employee, officer or member to the employer within one-hundred and twenty (120) days after the expense was paid or incurred.

(b) Payments that do not include all of the above or exceed federal per diem or federal allowances will be deemed to be wages gross earnings.

APPENDIX A— Section 15. GLOSSARYlossary Ofof TERMINOLOGYterminology

1. (a) Actual (A) Losses

The incurred loss amounts for workers' compensation claims submitted by the employer, which have event dates in the three (3) year window of time used for experience rating. The losses will include the case reserves as of the evaluation date set by the plan, and will have applicable plan minimums and caps applied for use in the experience rating formula.

2. (b) Actual Excess (Ae) Losses

The Actual Excess Losses for each claim represents the more random and less controllable portion of the claim. For each claim, the Actual Excess Loss is computed as the difference between the Total Actual Loss for the claim and Actual Primary Loss for the claim.

3. (c) Actual Primary (Ap) Losses

The experience rating plan segregates the Total Actual Loss on each claim into two components – primary and excess. The Actual Primary Loss for each claim represents the more predictive and controllable portion of the claim. The Actual Primary Loss value for each claim is obtained by the formula: Actual Primary Loss = Total Actual Loss if Total Loss is less than ten thousand dollars (\$10,000.00); = ten thousand dollars (\$10,000.00) if Total Loss is equal to or greater than ten thousand dollars (\$10,000.00).

4. (d) Credibility (Z) Value

A measure of the predictive value in a given application that the actuary attaches to a particular set of data, such as the claims experience used for determining experience modification ratings.

5. (e) Credibility Excess (Ze) Value

The Credibility Excess, or Ze Value, is the weight given to the risk's Actual Excess Losses relative to the average Expected Excess Losses for a similarly-sized risk in the same standard classification(s). It is intended to reflect the actuarial predictability of a risk's excess loss experience. The larger the risk is, the greater the weight is given to the excess loss experience and the greater the Ze. The excess experience of very small experience rated risks has essentially no predictive value and, as a result, the Ze for these risks may be zero (0). The complement of the Ze, (1 – Ze), is the weight given to the risk's Expected Excess Losses. The Ze Value varies with a risk's Expected Losses.

6. (f) Credibility Primary (Zp) Value

The Credibility Primary (Zp) Value, is the weight given to the risk's Actual Primary Losses relative to the average Expected Primary Losses for a similarly-sized risk in the same standard classification(s). It is intended to reflect the actuarial predictability of a risk's primary loss experience. The larger the risk is, the greater the weight is given to the primary loss experience and the greater the Zp. The complement of the Zp value (1 – Zp), is the weight given to the risk's Expected Primary Losses. The Zp Value varies with a risk's Expected Losses.

7. (g) Expected (E) Losses (also referred to as Total Expected Loss)

The Expected Losses are the basis to which actual losses are compared in the experience rating formula. They are derived for each classification as the product of the payroll for the classification and the expected loss rate applicable to the classification. They are also computed as the sum of the Expected Primary Losses and the Expected Excess Losses. For other than per capita

classifications, this product is then divided by one hundred (100). The Expected Loss Rate for a classification is the average rate of losses per one hundred dollars (\$100.00) of payroll that is expected for the classification during an experience rating period.

8. (h) Expected Excess (Ee) Losses

The Expected Excess Losses are the portion of the Expected Losses that is considered excess, and are used in the experience rating formula in combination with the Actual Excess Losses. The Expected Excess Losses for a classification are determined by multiplying the Excess Expected Loss Rate for the classification per \$100 of employer payroll for the classification. The total Expected Excess Losses are the sum of the Expected Excess Losses over all classifications.

9. (i) Expected Primary (Ep) Losses

The Expected Primary Losses are the portion of the Expected Losses that is considered primary, and are used in the experience rating formula in combination with the Actual Primary Losses. The Expected Primary Losses for a classification are determined by multiplying the Primary Expected Loss Rate for the classification by the employer payroll for the classification. The total Expected Primary Losses are the sum of the Expected Primary Losses over all classifications.

10. (j) Multiple Claim Occurrence (MCO)

Claims with multiple claimants or catastrophe claims combines claims together which then have a \$500,000.00 limit (2 X the Maximum Single Loss Amount of \$250,000.00).

11. (k) Multiple Single Loss Amount

Maximum Single Loss is the maximum limit of incurred loss, not to exceed the state accident limit of \$250,000.00.

12. (l) Split Plan

A method for calculating EMRs that balances the effect of more frequent losses that fall below a “split point” (a loss amount determined by the state based on Actuary recommendations), with more severe losses that occur above the split point.

13. (m) Split Point

A loss amount determined by the state based on actuarial recommendations. Losses falling below the split point are considered Primary Losses. Any remaining losses above the Primary Losses and below the Maximum Single Loss Amount are considered the Excess Losses.

14. (n) Maximum Loss Cap

The Maximum Loss Cap is the state’s accident limit per a single claim or two (2) times the state’s accident limit for multiple claimants or catastrophe.