



Rate Setting Review

**Final Program Policy Decisions and Supporting Rationale for
Changes Related to Rate Setting Enhancements**

Date: March 2012

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Introduction

At the December 2011 Board of Directors' meeting, the Board agreed to initiate Stage 2 consultation with stakeholders on the package of policy changes accompanying the proposed Rate Setting Model enhancements. Subsequently, the WCB posted the background paper and draft program policy changes to the WCB website and mailed the materials to individuals on the key stakeholder mailing list. The deadline for submissions was February 29, 2012. The WCB received 16 submissions from stakeholders (employers, employer associations, occupational health & safety consultants, and injured worker associations) offering input on the proposed program policy changes.

The Rate Setting Review - Program Policy Background Paper can be found on the WCB website at www.wcb.ns.ca.

On March 15, 2012, the WCB Board of Directors approved the following program policy changes:

- Changes to *Policy 9.4.2R3 Experience Rating – Maximum Merit or Demerit Surcharge* to reflect the Straight to Surcharge enhancement;
- Changes to *Policy 9.4.5R1 Costs Used for Fatal Claims for Experience Rating* and *Policy 9.4.4R1 Claims Costs Which are Excluded from Experience Rating* to reflect the Linkages with Fatalities enhancement;
- A new *Policy 11.1.4 Conditional Surcharge Refund Program*.

Please see Appendix A-C for the revised and new program policies.

This report includes:

- Key issues raised by stakeholders during Stage 2 consultation on the proposed program policy changes and WCB response to these issues;
- Appendix A-C: WCB's final policy decisions as reflected in the final versions of the program policies, and
- Appendix D: Summary of feedback received during Stage 2 consultation.

Key Issues Raised During Stage 2 Consultation and WCB Response

This section of the report summarizes the key issues raised by stakeholders regarding the proposed rate setting enhancements and the WCB's response to these issues. For a detailed overview of input received from stakeholders, see Appendix D - Stage Two Consultation Summary.

Employers and Employer Associations

A. Straight to Surcharge - Issues

- Could consider moving from 2 successive warning notices to one, instead of removing them altogether. This could give an opportunity to let business know the future administrative demands they will face.

WCB Response: The goal of the surcharge program remains consistent, to encourage employers to take the necessary steps to create safer workplaces. The focus is on bringing about lasting changes in safety culture. In a typical year, less than one half of one percentage will be surcharged. For those employers that do not show lasting improvement in their injury costs compared to others in their rate group will find themselves back in a surcharge position. If employers have shown improvements for a period greater than three years and then find themselves in a surcharge position again, they will once again receive two warning notices.

B. Linkage with Fatalities - Issues

- Should only charge an employer for a fatal claim if the employer is at fault for the fatality. If the fatality is caused by a third party, the employer should not be penalized, such as when an employee is driving between clients and is struck by another vehicle.
- Should there be an absolute value associated to the costs of a fatality regardless of size of the organization, or should fatality costs be curved based on the size of the employer to ensure employers of all size feel a similar impact?
- What was the rationale for using a factor of 5 times?

WCB Response: The WCB evaluates every fatality on a case by case basis to determine if the fatality is compensable (i.e. did the fatality arise out of and in the course of employment) – we do not adjudicate "fault", we adjudicate whether the fatality arose out of and in the course of employment, as defined in the *Workers' Compensation Act*.

A suggestion has been made to vary the costs allocated to fatalities for experience rating purposes based on the size of the employer to ensure employers of all size feel a similar impact. WCB's Experience Rating Program has maximum demerits in place. This means there is a cap on the amount an employer's WCB rate can increase in a given year. Because of this cap, we regard applying an absolute value (i.e. 5x) to the costs of a fatality as having a similar impact for employers of differing sizes – smaller employers were already reaching maximum demerit under the existing costs using a 2x factor and moving to a 5x factor will not have as great an impact on them. It will have a greater impact on larger employers as this will move them closer to the maximum demerit if they experience a compensable fatality in their workplace.

The WCB is proposing to increase the costs used for fatal claims to five times the maximum assessable earnings for the year of the accident. In determining the approach to take for this change, we reviewed approaches taken by other jurisdictions in the country in assigning costs to fatalities. While approaches vary by jurisdiction, there were at least three other WCBs that also apply absolute costs to fatalities in a range similar to 5 times the maximum assessable earnings in NS. This, coupled with the fact that a higher multiplier was considered punitive by some stakeholders, lead us to propose a multiplier of 5 times the maximum assessable earnings.

C. Conditional Surcharge Refund – Issues

- Small firms will unlikely be able to take advantage of a conditional surcharge refund as they can find it challenging to continue regular business operations while an employee is undertaking safety training.
- Challenge that the surcharge refund would be small when compared to the cost of safety training.
- A good idea but limited in scope considering only 96 employers in NS are currently in a surcharge position. Could expand this to refund a portion of demerit charges to be a greater motivator to change safety behavior.
- Concern over where funding for the program will come from.
- Consider whether a minimum investment is required for safety enhancements to justify administrative costs.

WCB Response: The majority of stakeholders support a conditional surcharge refund program, however some are concerned that small firms will not be able to take advantage of the program or the cost of training will be higher than the refund amount. While safety training is one area that employers can invest in to qualify for the refund, these are other investments in safety that can be made by smaller firms, such as safety equipment purchase or a safety audit, that may not impact business operations to the same extent as safety training.

Regarding the suggestion to expand the surcharge refund, the WCB is not prepared to expand the refund to employers in a demerit position at this time but could consider at some point in the future depending on how successful the conditional surcharge refund program is.

Questions were also raised regarding funding for the conditional surcharge refund program. The program is funded through the surcharge dollars collected from surcharge employers. In essence, the program provides an opportunity for surcharge employers to receive back a portion (or all) of their money paid in surcharge to the WCB, if they can show they have made investments in safety.

Regarding a minimum requirement for safety enhancements, the WCB did consider this in the development of the conditional surcharge refund program. However, it was felt that setting a minimum may not send the right message to employers given that some surcharged employers only pay a small amount in surcharge already. Setting a minimum could mean they would not be eligible for any refund. That being said, this is a new program for the WCB and we will evaluate the administrative impacts of the program as we roll it out. We could re-consider

setting a minimum at some point in the future if experience shows the administrative impacts are high.

Injured Workers' Associations and Labour

A. Straight to Surcharge - Issues

- Generally support the change but oppose a restriction on maximum rate (i.e. the maximum limit of 20%). The WCB should be able to impose a surcharge commensurate to the rate of injuries and deaths in a workplace.

WCB Response: The issue of removing the annual maximum surcharge of 20% is broader than the policy changes proposed to remove the surcharge warning notices if improvements are not sustained. The 20% maximum was included as part of the original surcharge program and findings indicate the current program is working well. We know that the results of investments in safety take time and we want to give companies the chance to make the necessary changes to reduce workplace injuries. The 20% maximum surcharge is cumulative in nature and builds over time becoming progressively higher if an employer safety record does not improve to levels comparable with their peers.

As no issues were raised with the removal of the surcharge warning notices, no revisions were made to the policy language.

B. Linkage with Fatalities - Issues

- Support the change but are unclear whether the multiplier of five times will be sufficient to achieve this goal. Could be more useful to prohibit any employer from entitlement to an experience rating merit reduction if it has had any death at all in its workplace during a year.

WCB Response: In developing this proposed rate setting enhancement, the WCB considered prohibiting a merit if an employer experienced a workplace fatality or increasing the multiplier higher than five times. It was determined to be the most appropriate approach to mitigate the risk of an employer receiving a merit if they experience a workplace fatality, as a higher multiplier was considered punitive by some stakeholders, would be to use the multiplier of five times.

C. Conditional Surcharge Refund - Issues

- Criteria should also include mandatory training for Joint Occupational Health and Safety (JOSH) Committees.
- The policy allows "repeat" rebates as it requires at least "25% improvement in cost experience" over a three-year period from the initial rebate. Do not support further rebates to an employer who has managed to get itself back on the surcharge list. This should be a "one-time only" possibility.
- Concerned about "third party safety audits". These audits should be done by provincial occupational health and safety inspectors, not private companies paid directly by the employer and thus subject to an economic relationship that has potential to be biased.

- Any softening of the surcharge program is objectionable.

WCB Response: Any safety training for JOSH Committees can fall under the overall category of safety training so this is covered under the existing criteria. Regarding the issue of “repeat” rebates, this was the approach taken by the WCB because we recognize that it can take time to make all the investments in safety needed to see improvements in the workplace and for those improvements to show up in claims experience.

Appendix A – Straight to Surcharge Final Policy Changes

PROGRAM POLICY

NUMBER:9.4.2R4

Effective Date: to be inserted

**Topic: Experience Rating –
Maximum Merit or
Demerit Surcharge**

Date Issued: to be inserted

Section: Assessments and Collections

Date Approved by Board of Directors: to be inserted

Subsection: Experience Rating

POLICY STATEMENT

1. The maximum merit (decrease) in an employer's basic rate as a result of Experience Rating is 30%.
2. The maximum demerit (increase) in an employer's basic rate as a result of Experience Rating is 60%.
3. Notwithstanding paragraph 2, where an employer's claims costs to payroll ratio as calculated for experience rating is at least 200% greater than the overall rate group ratio:
 - a. for four consecutive experience rating assessment statements a surcharge will be applied in the fourth year if the employer participates fully in experience rating;
 - b. for five consecutive experience rating assessment statements a surcharge will be applied in the fifth year if an employer's participation in experience rating, as outlined in Policy 9.4.1R1, ranges from 50% to 99%; and
 - c. for six consecutive experience rating assessment statements a surcharge will be applied in the sixth year if the employer's participation in experience rating, as outlined in Policy 9.4.1R1, is less than 50%.

The surcharge amount will be calculated based on an employer's experience rating participation level in the surcharge year.

4. Notwithstanding paragraph 3, an employer must be issued two successive surcharge warning notices by the WCB prior to a surcharge being applied to its rate.
5. **Notwithstanding paragraph 4, surcharge warning notices will not be issued where a previously surcharged employer is out of surcharge position for less than three years.**
6. For initial implementation of the surcharge program, the Board will use Experience Rating Statements from 2005 and onward for fully participating employers. For employers whose participation in experience rating ranges from 50% to 99% the Board will use Experience Rating Statements from 2004 onward. For those employers who participate less than 50% in experience rating, the Board will use Experience Rating Statements from 2003 onward.
7. The experience rating surcharge will be equal to annual increments not greater than 20% of the Rate Group's basic rate. Further, the maximum surcharge a firm will receive is an amount equal to its cost experience percentage above 200% of the rate group ratio of claims costs experience for the

assessment year. **Where a previously surcharged employer returns to a surcharge position, surcharge amount will re-commence at an annual increment not greater than 20% of the Rate Group's basic rate.**

8. The amount of the surcharge will be added to the demerit to determine the overall experience rating adjustment.

APPLICATION

This Policy applies to 2013 assessment rates onward. It replaces Policy 9.4.2R3, issued on February 12, 2008 and effective January 24, 2008.

REFERENCES

Workers' Compensation Act (Chapter 10, Acts of 1994-95), (as amended), Section 121. Policy 9.4.1R1.

Appendix B – Linkage with Fatalities Final Policy Changes

PROGRAM POLICY

NUMBER: 9.4.5R2

Effective Date: to be inserted

**Topic: Costs Used for Fatal Claims
for Experience Rating**

Date Issued: to be inserted

Section: Assessments and Collections

Date Approved by Board of Directors: to be inserted

Subsection: Experience Rating

POLICY STATEMENT

For the purposes of Experience Rating, the costs used for fatal claims for the three-year period will be ~~twice~~ **five times** the maximum assessable earnings level for the year of the accident, rather than the actual cost of the accident.

APPLICATION

This Policy applies to 2013 assessment rates onward. It replaces Policy 9.4.5R1, issued on May 2, 2005 and effective April 12, 2005.

REFERENCES

[Workers' Compensation Act](#) (Chapter 10, Acts of 1994-95), Section 121(1)(4).

PROGRAM POLICY

NUMBER: 9.4.4R2

Effective Date: to be inserted

**Topic: Claims Costs Which are Excluded
from Experience Rating**

Date Issued: to be inserted

Section: Assessments and Collections

Date Approved by Board of Directors: to be inserted

Subsection: Experience Rating

POLICY STATEMENT

1. The following are claims costs which are excluded from consideration for calculating a firm's experience rate.
 - 1.1 Costs recovered by way of a third party action.
 - 1.2 Compensation costs paid out prior to the disallowing of a claim.
 - 1.3 Costs transferred to another employer or fund.
 - 1.4 Occupational disease claims which on average require exposure for two or more years before manifestation into a disability.
 - 1.5 Prior to the application of the weighting factors, the costs for a specific claim that are beyond twice the maximum assessable earnings level for the year of the accident. **This does not apply to fatal claims.**
 - 1.6 Capitalization costs for claims which qualify for long term disability.
 - 1.7 Disasters.
 - 1.8 Costs associated with payment of interest pursuant to [Policy 3.9.10](#).

APPLICATION

This Policy applies to 2006 assessment rates onward. It replaces Policy 9.4.4R1, issued on May 2, 2005 and effective April 12, 2005.

The exclusion of fatal claim costs in Section 1.5 of this Policy applies to 2013 assessment rates onward.

REFERENCES

[Workers' Compensation Act](#) (Chapter 10, Acts of 1994-95), Section 121(1)(2)(3). Policy 9.4.3R1

Appendix C – Conditional Surcharge Refund Final Policy

PROGRAM POLICY

NUMBER: 11.1.4

Effective Date: to be inserted

Topic: Conditional Surcharge Refund Program

Date Issued: to be inserted

Section: Prevention

Date Approved by Board of Directors: to be inserted

Subsection: Conditional Surcharge Refund Program

Preamble

In 2005, the WCB introduced the Surcharge Program to encourage employers with consistently poor safety and return to work records to improve safety and return to work outcomes in the workplace. Under the Surcharge Program, employers whose accident costs are significantly and consistently worse than their rate group may receive surcharges. Policy 9.4.2R4 *Experience Rating - Maximum Merit or Demerit Surcharge* describes when a surcharge is applied.

The Conditional Surcharge Refund Program provides employers an opportunity to be refunded the money they have paid in surcharges where they have made investments in safety. The purpose of this program policy is to describe the criteria WCB registered employers must meet to be eligible for the Conditional Surcharge Refund Program and to provide details of how the refund is payable.

Definitions

“cost experience ratio” is an employer’s weighted 3-year experience rating costs relative to the employer’s 3-year assessable payroll.

Policy Statement 1.

Eligibility Criteria

To be eligible for the Conditional Surcharge Refund Program in a given calendar year, an employer must meet the following criteria:

- Employer must be in good standing
- Employer must have paid surcharge premiums in the previous calendar year
- Employer must make investment(s) in safety in the previous calendar year, which fall under the following categories:
 - Safety training for managers/supervisors and/or employees;
 - Third party safety audit of employer worksite;
 - Health & Safety programming, such as specific prevention programs;
 - New equipment purchase or upgrade to existing equipment to prevent injury;
 - Hire or contract dedicated Occupational Health & Safety personnel

- The investment(s) in safety must benefit workers working in Nova Scotia.
- Employer must be able to show proof of the investment(s) in safety, through either an invoice or confirmation of monies paid to hired or contracted Occupational Health & Safety personnel.

2. **Refund**

If an employer meets the above criteria they will be eligible to receive a conditional surcharge refund, payable as follows:

- Refund is equal to the amount invested in safety in the previous calendar year up to a maximum equal to the employer's surcharge premium paid in the previous calendar year.
- Proof of the investment(s) in safety is required before a refund will be issued.
- Refund will be forfeited if more than 12 months has elapsed since the end of the year the surcharge was applied. For example, employers that pay surcharge premiums in 2013 and make an investment in safety in 2013 will be able to receive a refund in 2014. If a refund is not requested by the end of 2014, the money is forfeited.
- If an employer does not show a minimum of 25% improvement in their cost experience ratio three years following the initial conditional surcharge refund, they will not be eligible for further refunds from this point forward until they can show this minimum improvement.

Application This Program Policy applies to 2013 assessment rates onward.

References *Workers' Compensation Act* (Chapter 10, Acts of 1994-95), Section 121(5).

Appendix D - Stage Two Consultation Summary

Outlined below is a summary of general comments submitted by various stakeholders.

Employers, Employer Associations and OH&S consultants

General Comments

- Linking experience rating to OH&S inspections, investigations or prosecutions is not supported as this places an employer in a position to be penalized twice for the same offense.
- Would like to see more rewards for employers that are doing well. Facilities that are doing well still struggle with very limited resources.
- Changes seem to focus on being punitive.
- If surcharges are necessary, why not make it mandatory that the surcharge fee go towards setting up an improved safety program.
- Management commitment and implementation of elements of a proactive safety program should be recognized and incentives provided.
- Employers need clarification on drivers of WCB rates as well as how WCB rates are calculated. Over the years, we have been advised to focus on reducing claim costs to reduce WCB premiums. When targets were achieved we were advised that we needed to reduce total injury numbers.
- We support the promotion of safe work practices and a decrease in workplace injuries, but not at the escalating expense to employers. We encourage a more transparent process to bring about these improvements to the system.
- Some feel more sector input and consultation is needed before such policies are implemented.

Conditional Surcharge Refund

- Small firms will unlikely be able to take advantage of a conditional surcharge refund as they can find it challenging to continue regular business operations while an employee is undertaking safety training.
- Challenge that the surcharge refund would be small when compared to the cost of safety training.
- A good idea but limited in scope considering only 96 employers in NS are currently in a surcharge position. Could expand this to refund a portion of demerit charges to be a greater motivator to change safety behavior.
- Disagree with the criteria outlined. The money should be used to fund a Certificate of Recognition only.
- This acknowledges the importance of resources such as proper equipment and training but seems to require a lot of paperwork and bureaucracy to implement and maintain. Seems to be a step backwards, we should be putting those resources on the front lines.

- Three years is a short period and a one time significant claim could delay the benefits of any safety measures implemented.
- Some do not support this program as feel the money refunded to these employers has to come from somewhere – who will be paying? Would prefer to see firms in surcharge position incented as all firms would. Support a model that provides opportunities for all firms to be awarded rate reduction through investment in proactive safety systems, on a go-forward basis.
- How will this initiative be funded?
- Would like to see the company with greater investment in OH&S personnel (i.e. those with a professional designation) get a greater payback.
- Consider whether a minimum investment is required under the proposed Conditional Surcharge Refund to justify administrative costs.
- Should also include mandatory training for JOHSC.

Straight to Surcharge

- Could consider moving from 2 successive warning notices to one, instead of removing them altogether. This could give an opportunity to let business know the future administrative demands they will face.
- Don't see how this is a positive step. What is the benefit here?
- Some support for active management of employers in the surcharge position; however there are many factors that influence sustained improvements.
- Why will the surcharge amount restart at an annual increment not greater than 20% of the rate group's basic rate? What prompted this cap?
- Some employers feel waiving the surcharge warning notices when relative accident cost improvements are not sustained for a three year period would be an unfair practise. It is suggested that warning notices remain in place.

Linkage with Fatalities

- Should only charge an employer for a fatal claim if the employer is at fault for the fatality. If the fatality is caused by a third party, the employer should not be penalized.
- Each case should be reviewed for its own set of circumstances. For example, an employee killed by faulty equipment which the employer neglected to repair is very different from say a pregnant employee who faints, hitting her head and dies. There must be a review here.
- Agree that firms who experience a fatality should not be in a merit position, however there are situations where the employer has little or no control over the event.
- Agree with the end-goal of making the financial impact of a workplace fatality more equal to employers of all sizes but were not confident that the proposed changes would be effective in that goal. Should there be an absolute value associated to the costs of a

fatality regardless of size of organization, or should fatality costs be curved based on the size of the employer to ensure that employers of all size feel a similar impact?

- The principle of health and safety is due diligence and this modification has not taken this into account. The fact that there was a fatality in and of its self does not mean that the organization was at fault, they may have done everything reasonable in the circumstances to prevent the incident from occurring.
- Definition of compensable fatality should be more clearly defined. There are instances where a death may occur on the worksite that is unrelated to any act of omission or commission on the part of the employer.
- Feel they would be in a better position to comment on the change if further information was provided regarding the rationale for selecting the 5X multiplier, such as a review of policies in other jurisdictions.
- Is there evidence to support a multiplier of 5x? This number seems somewhat arbitrary.

Injured Workers' Association and Labour

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General Comments

- No employer in the Province should benefit from a reduction in WCB premiums, regardless of reported claims, if the employer has received compliance orders or charges under the *Occupational Health and Safety Act*.
- The continued existence of experience rating merits violates the agreement of “no new benefits, no rate reductions” reached by all stakeholders a few years ago.

Straight to Surcharge

- General support the change.
- Oppose a restriction on maximum rate (i.e. the maximum limit of 20%). The WCB should be able to impose a surcharge commensurate to the rate of injuries and deaths in a workplace.

Linkage with Fatalities

- Support the change but are unclear whether the multiplier of five times will be sufficient to achieve this goal. Could be more useful to prohibit any employer from entitlement to an experience rating merit reduction if it has had any death at all in its workplace during a year.

Conditional Surcharge Refund

- Criteria should also include mandatory training for Joint Occupational Health and Safety Committees.
- The policy allows “repeat” rebates as it requires at least “25% improvement in cost experience” over a three-year period from the initial rebate. Do not support further

rebates to an employer who has managed to get itself back on the surcharge list. This should be a “one-time only” possibility.

- Focus should be on an objective assessment of whether the health and safety reality for workers employed by the employer has actually improved, not cost of claims.
- Concerned about “third party safety audits”. These audits should be done by provincial occupational health and safety inspectors, not private companies paid directly by the employer and thus subject to an economic relationship that has the potential to be biased.
- WCB should maintain control at all times of any and all money it receives through the surcharge program and its potential rebate. This should not be allowed to be administered and invested by a private or separate entity.
- Any softening of the surcharge program is objectionable.

Appendix E: Submission received from Office of the Employer Advisor
(for Board of Directors only, will not be included in the public document)