WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Bureau of Employment Programs Workers' Compensation Division TITLE NUMBER: 85CSR23

RULE TYPE: Legislative* ; CITE AUTHORITY W.Va. Code, §§21A-2-6(2); 21A-3-7(b) & -7(c); 23-1-1; 23-2-18; 23-2B-2

AMENDMENT TO AN EXISTING RULE: YES___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ______

TITLE OF RULE BEING AMENDED: ______

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 23

TITLE OF RULE BEING PROPOSED: Loss Prevention

*Per W. Va. Code, §21A-3-7(c), this rule is not subject to Legislative review.

DATE OF PUBLIC HEARING: September 6, 1995 September 22, 1995 TIME: 10:00 a.m.

LOCATION OF PUBLIC HEARING: On September 6, 1995, in Room 206, Civic Center, Charleston, West Virginia

On September 22, 1995, in the Jerry West Room, West Virginia University Coliseum, Morgantown, West Virginia

COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:
Randall B. Suter
Counsel, Legal Services Div.
Post Office Box 3922
Charleston, WV 25339-3922
(304) 926-5130

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Andrew N. Richardson
Andrew N. Richardson
Commissioner

5-20

Summary of Proposed Exempt Legislative Rule
Statement of Circumstances
Loss Prevention
Title 85, Series 23

This legislative rule is a new rule to implement the provisions of West Virginia Code, §23-2B-2, regarding mandatory safety programs.

The purpose of this rule is to promote workplace health and safety programs and encourage compliance with occupational safety and health laws, regulations and standards.

This rule provides for the implementation of mandatory safety programs for certain employers who fall within certain risk categories as determined by their experience modification factor and annual premium size. This rule creates three tiers of employers who fall within the mandatory program range. The requirements for each tier are progressive.

The first two tiers are determined by an examination of the experience modification factor and annual premium size. Tier One requirements consist of a basis safety education component for the employer. Tier Two requirements consist of the basic safety education component, a safety plan, the establishment of a joint labor management safety committee, quarterly reports, and discretionary safety inspection.

Tier Three employers are determined as a result of their non-participation at the Tier One or Tier Two levels or non-compliance with Tier Two requirements. In addition to the requirements of Tier Two, Tier Three employers may be subject to premium surcharges.

This rule provides for notice, administrative hearings, treatment of new employers, and matters of classification and reclassification.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 85CSR23 - "Loss Prevention"

Type of Rule: X Legislative ___Interpretive ___Procedural

Agency: Bureau of Employment Programs - Workers' Compensation Division

Address: Legal Services Division
Post Office Box 3922
Charleston, WV 25339-3922

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	NET IMPACT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$846,900	($64,150,236)	($63,303,336)*	$-	$-
PERSONAL SERVICES	88,900	-	-	-	-
CURRENT EXPENSE	-	-	-	-	-
REPAIRS & ALTERNATIONS	-	-	-	-	-
EQUIPMENT	8,000	-	-	-	-
OTHER	750,000	(64,150,236)	(63,303,336)	-	-

2. Explanation of above estimates:

See attached schedules for explanation of costs and savings.

3. Objectives of these rules:

The purpose of this rule is to implement the provisions of W. Va. Code §23-2B-2, regarding mandatory safety programs for certain employers. The rule promotes workplace health and safety programs and encourages compliance with occupational safety and health laws, regulations and standards. The goal of the proposed rule is to establish Workers' Compensation reforms which result in a reduction of occupational injuries and illnesses and consequently a reduction in the Workers' Compensation Fund deficit.

*These savings will also be impacted by the forthcoming rules related to qualified loss management. These savings cannot be reasonably allocated between this rule (85CSR23) and the forthcoming one.

Rule Title: 85CSR - "Loss Prevention"

4. Explanation of Overall Economic Impact of Proposed Rule.

A. **Economic Impact on State Government.**

The Workers' Compensation Division has a large deficit. The implementation of mandatory safety programs, by certain employers who experience an elevated rate of loss will reduce that employer's rate of loss by focusing the employer's attention on safety and loss prevention.

B. **Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.**

Certain employers with elevated rates of loss will be required to undertake steps to focus their attention on safety issues. Some expenditures by these participants will be necessary with regard to reporting and safety plan development. The loss reduction experienced as a result of the focus on safety will ultimately result in a lower premium rate for the employer and a lower loss experience rate for the risk pool.

C. **Economic Impact on Citizens/Public at Large.**

The goal of this rule is to draw certain employers' attention to safety matters so as to improve worksite safety and reduce claims experience. The ultimate aim of this rule is to provide for a reduction in the Workers' Compensation deficit by reducing workplace injuries and illnesses.

Date: July 31, 1995

Signature of Agency Head or Authorized Representative

Andrew N. Richardson

Andrew N. Richardson
Commissioner, Bureau of Employment Programs

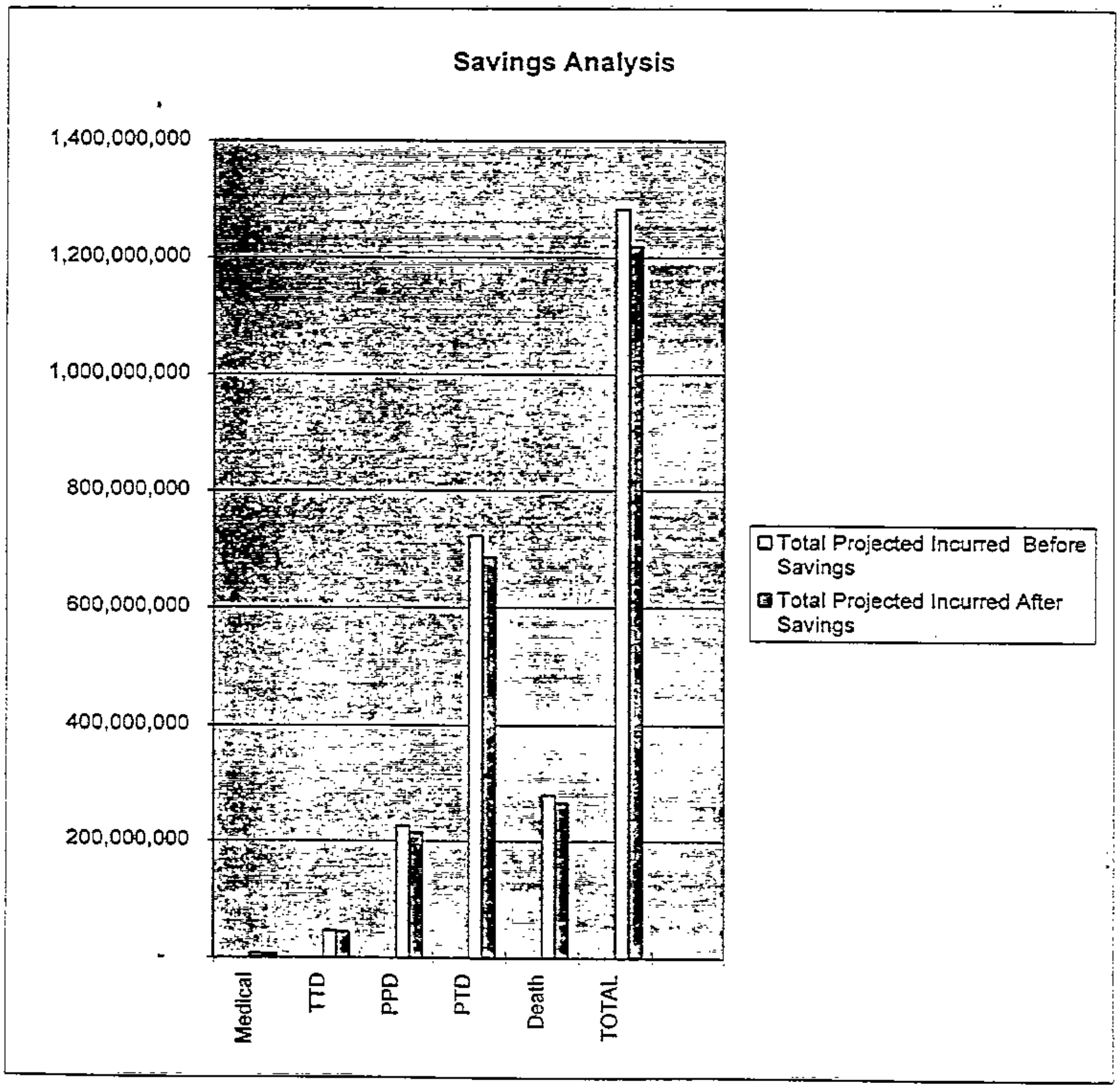
The following assumptions and estimates were made in determining the Effect of the Proposed Rule with regard to the Increase (Costs):

INCREASE (Costs)

Personal Services - Salaries for one Safety Coordinator ($50,000 and one Clerical/Support staff ($20,000) & related benefits (used a 27 % rate)	$ 88,900
Equipment - To provide the necessary office and computer equipment for this unit	8,000
Other - To provide contracted services to conduct workplace inspections for businesses which fall below established levels	
Estimate 750 companies in this category X $1,000 per inspection	750,000
ESTIMATED TOTAL COST	**$846,900**

SAVINGS ANALYSIS

Benefit Type	Projected Claim Count for FY96 net of 5% Reduction	Average Cost Per Claim Assuming All Other Things Equal	Total Projected Incurred Before Savings	Total Projected Incurred After Savings
Medical	22,969	276	6,670,442	6,336,920
TTD	23,799	1,867	46,780,628	44,441,596
PPD	16,469	13,049	226,219,727	214,908,741
PTD	2,142	320,631	723,022,161	686,871,053
Death	1,120	237,754	280,311,765	266,296,177
TOTAL	66,500		1,283,004,723	1,218,854,487



Unaudited - For management discussion purposes only.

HISTORICAL TREND DATA
SOURCE: MIRA (OPEN CLAIMS DATA)

Benefit Type	# of Claims	% of Claim Type to Total # of Claims	Total Incurred (Discounted)	Average Cost Per Claim Type
Medical	91,573	34.54%	25,263,975	276
TTD	94,882	35.79%	177,177,053	1,867
PPD	65,660	24.77%	856,805,911	13,049
PTD	8,539	3.22%	2,737,865,293	320,631
Death	4,463	1.68%	1,061,095,342	237,754
	265,117	100.00%	4,858,207,574	

PROJECTED ANNUAL SAVINGS

Benefit Type	Projected Claim Count for FY96	5% Reduction Amt of Claims by Type	Average Cost Per Claim Assuming All Other Things Equal	Projected Annual Savings by Claim Type
Medical	24,178	1,209	276	333,522
TTD	25,052	1,253	1,867	2,339,031
PPD	17,336	867	13,049	11,310,986
PTD	2,255	113	320,631	36,151,108
Death	1,179	59	237,754	14,015,588
	70,000	3,500		64,150,236

Unaudited - For management discussion purposes only.

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

TITLE 85
EXEMPT LEGISLATIVE RULES
BUREAU OF EMPLOYMENT PROGRAMS
WORKERS' COMPENSATION DIVISION

SERIES 23
LOSS PREVENTION

§85-23-1. General.

1.1. Scope. -- These rules implement the provisions of West Virginia Code, §23-2B-2, regarding mandatory safety programs.

1.2. Authority. -- West Virginia Code, §21A-2-6(1), -6(2) & -6(14); §21A-2-19; §21A-3-7(b) & -7(c); and §23-1-1. Pursuant to West Virginia Code, §21A-3-7(c), rules adopted by the compensation programs performance council and the commissioner are not subject to legislative approval as would otherwise be required under West Virginia Code, §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed. Pursuant to enrolled committee substitute for house bill 4030, regular session, 1994, the department of commerce, labor and environmental resources was abolished. Pursuant to that same bill and to executive order no. 5-94 by the governor, the commissioner of the bureau of employment programs is empowered to promulgate rules and regulations without the consent or approval of a departmental secretary.

1.3. Filing date. --

1.4. Effective date. --

§85-23-2. Purpose of rule.

The purpose of this rule is to implement the provisions of West Virginia Code, §23-2B-2, to promote workplace health and safety programs and encourage compliance with occupational safety and health laws, regulations and standards. The goal of this rule is to establish workers' compensation reforms which result in a reduction of occupational injuries and illnesses in the State of West Virginia and consequently a reduction in the workers' compensation fund deficit.

§85-23-3. Definitions.

As used in this rule, the following terms have the stated meanings unless the context of a specific use clearly indicates another meaning is intended.

3.1. "Commissioner" means the commissioner of the bureau of employment programs pursuant to West Virginia Code, §21A-2-1, and West Virginia Code, §23-1-1, and any deputies designated pursuant to West Virginia Code, §21A-2-12 & -13.

3.2. "Division" means the workers' compensation division within the bureau of employment programs as provided for by West Virginia Code, §21A-1-4, and West Virginia Code, §23-1-1 et seq.

3.3. "Evaluation criteria" means that level of performance criteria which results in a employer's designation as a focus program employer or a target program employer.

3.4. "Experience modification factor" means an actuarially determined multiplier of the premium tax base rate used to determine the premium tax rate. (Note: The experience modification factor has been historically referred to as the experience modification rate or EMR.)

3.5. "Focus program employer" means any employer, not excluded by the division under the provisions of section eight, whose combination of premium tax size, and experience modification factor meets the criteria of table 85-23A of this rule for a tier one employer. (See, Note: using table 85-23A attached to the table.)

3.6. "Injury" means compensable injuries for which costs are incurred by the division within the meaning of W. Va. Code §23-4-1 et seq.

3.7. "Joint labor and management safety committee" means a formally structured process to provide for and foster employee and employer involvement in safety reforms as provided in section two. Such structures include, but are not limited to, groups such as quality circles and self directed work teams. A tiered safety organization is permitted, if employees participate at each level of the organized committees. An employer operating under a collective bargaining agremeent that contains provisions regulating the formation and operation of a safety committee that meets or exceeds the minimum requirements of this rule shall be considered to have met the requirements of this rule for safety committees.

3.7.1. A joint labor and management safety committee must exhibit the following characteristics to be considered acceptable:

a. Safety must be a priority of the group;

b. The group must have the authority to conduct safety inspections of the work area for which they are responsible and to determine and recommend corrective measures to management;

c. The group must meet regularly and minutes must be kept of the meetings;

d. Each member of the committee shall have an equal vote;

e. Members of the committee shall not experience any loss of wages while attending safety committee meetings or performing duties at the direction of the safety committee;

f. At least fifty percent (50%) of the members of the committee shall be employee representatives; and

g. All members of the committee shall be trained in matters related to workplace safety, such training shall include attendance at a seminar on basic safety programs sponsored or approved by the division.

3.8. "Measurable improvement" means mathematical demonstrative evidence of safety improvement at the employer's workplace.

3.9. "New subscriber" means an employer that has not accumulated the necessary claims and premium tax experience to be afforded an experience modification factor by the division for purposes of ratemaking, but has accumulated sufficient claims and premium tax experience to be afforded an experience modification factor for purposes of this rule.

3.10. "Premium tax surcharge" means a percentage of the premium tax added to an employer's quarterly premium tax as a result of the employer's classification as a tier three employer.

3.11. "Performance criteria" means the measurement of an employer's safety performance by combining the premium tax size and experience modification factor as per table 85-23A of this rule.

3.12. "Quarter" means the four calendar quarters: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31 of each calendar year.

3.13. "Review period" means a period of two consecutive quarters.

3.14. "Target program employer" means any employer, not excluded by the division under the provisions of section eight, whose combination of premium size and experience modification factor meets the criteria of table 85-23A of this rule for a tier two employer. (See, Note: using table 85-23A, attached to the table.)

3.15. "Tier three employer" means any employer who chooses not to participate in the focus program employer or target program employer mandates or any employer who fails to comply with the mandates of the target program employer classification.

§85-23-4. Tier one: Focus program employer.

4.1. Notification. The division shall notify all employers whose performance criteria falls within the focus program employer classification. The division shall include in such notification an analysis of the occupational injuries and diseases incurred by the employer and a list of qualified safety consultants and agencies.

4.2. Seminar. All focus program employers must attend a seminar on basic safety programs sponsored or approved by the division.

4.3. Reports. The workers' compensation division shall provide a report to each focus program employer at the conclusion of each review period. The report shall detail claims information for the review period.

4.3.1. The focus program employer shall provide a copy of each report required under this section to all bargaining units representing the employees.

4.4. Reclassification. The division shall review the employer's performance criteria at the conclusion of each review period. Such review shall be completed within thirty (30) days following the conclusion of the review period.

4.4.1. When an employer's performance criteria is below the evaluation criteria for a focus program employer for two (2) consecutive review periods, the employer shall no longer be classified as a focus program employer and shall not be subject to further review, unless the performance criteria rises above the evaluation criteria for two consecutive review periods.

4.4.2. The focus program employer must show continued safety improvement to maintain the classification of focus program employer. The focus program employer shall be reclassified, subject to the discretion of the division under section eight, as a target program employer if, (1) measurable safety improvement is not made by the focus program employer over three review periods, or (2) the employer's experience modification factor exceeds the criteria for a focus program employer.

4.5. Notification of reclassification. The division shall notify all employers who are reclassified as a target program employer under these provisions. The notification shall include the reason for such reclassification as well as that material required under the notice provisions for a target program employer.

§85-23-5. Tier two: Target program employer.

5.1. Notification. The division shall notify all employers whose performance criteria falls within the target program employer classification. The division shall include in such notification an analysis of the occupational injuries and diseases incurred by the employer and a list of qualified safety consultants and agencies.

5.2. Seminar. All target program employers must attend a seminar on basic safety programs sponsored or approved by the division.

5.3. Joint Safety Committee. All target program employers shall establish a joint labor and management safety committee.

5.3.1. An employer that is a member of a multi-employer group operating under a collective bargaining agreement that contains provisions regulating the formation and operation of a safety committee that meets or exceeds the minimum requirements of this rule shall be considered to have met the requirements of this rule.

5.4. Plan. Within sixty (60) days of the target program employer notification of classification, all target program employers shall submit a plan to the division, detailing the manner in which they will comply with the requirements to establish a joint labor and management safety committee and improve workplace safety.

5.4.1. Within sixty (60) days of receipt, the division shall review the target program employer's plan and notify the employer of any required changes.

5.5. Reports. All target program employers shall submit quarterly reports to the division detailing the activities of the safety committee. The report shall provide the number of meetings held during the quarter, copies of the minutes of the joint labor and management safety committee, and results of facility inspections.

5.5.1. Quarterly reports shall be due on or before the last day of the month following the end of the quarter.

5.5.2. The target program employer shall provide a copy of each report required under this section to all bargaining units representing the employees and to the joint labor and management safety committee established under this section.

5.6. Inspections. All target program employers shall be subject to inspection by authorized safety representatives contracted by or employed by the division. The authorized safety representative may enter and inspect any target program employer's property, premise, or place on or at which employees are located at any reasonable time for the purpose of ascertaining the cause of employment injury trends and the remedial action necessary to reduce such injury trends. No person shall refuse entry or access to any authorized safety representative of the division who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection: Provided, that nothing contained herein eliminates any obligation to follow any process that may be required by law.

5.6.1. Within thirty (30) days following the completion of any inspection performed pursuant to this subsection, the authorized safety representative shall prepare a report regarding the findings of the inspection. The authorized safety representative shall provide a copy of each report required under this subsection to the target program employer and to all bargaining units representing the employees.

5.7. Reclassification. The division shall review the employer's performance criteria at the conclusion of each review period. Such review shall be completed within thirty (30) days following the receipt of the employee's quarterly report for the second quarter of each review period.

5.7.1. When an employer's performance criteria is below the evaluation criteria for a target program employer for two (2) consecutive review periods, the employer shall no longer be classified as a target program employer. If the employer's evaluation criteria meets the requirements for classification as a focus program employer, the employer shall meet the reporting requirements for a focus program employer.

5.7.2. If the employer's performance criteria is below the evaluation criteria for a focus program employer, the employer shall not be subject to further review, so long as the employer's performance criteria remains below the evaluation criteria for a focus program employer.

5.7.3. The target program employer must show measurable continued safety improvement to continue as a target program employer. If measurable safety improvement is not made over three review periods, the employer shall be reclassified subject to the discretion of the division under section eight, as a tier three employer.

5.8. Notification of reclassification. The division shall notify all employers who are reclassified as tier three employers under these provisions. The notification shall include the reason for such reclassification as well as that material required under the notice provisions for a tier three employer.

§85-23-6. Tier three employer.

6.1. Classification. The division shall classify as tier three employers all properly classified employers:

6.1.1. Who do not participate in the focus program employer program requirements;

6.1.2. Who do not participate in the target program employer program requirements; or

6.1.3. Who do not comply with the requirements of a target program employer.

6.2. Notification. The division shall notify all employers who are classified as a tier three employer. The division shall include in the notification the reason or reasons for such classification as a tier three employer. The division shall include in the notification an analysis of the occupational injuries and diseases incurred by the employer and a list of qualified safety consultants and agencies.

6.3. Requirements. Every tier three employer shall be subject to all requirements of the target program employer group.

6.4. Premium tax surcharge. In addition to other requirements of this rule, tier three employers may, in the discretion of the division, be subject to quarterly premium tax surcharges not to exceed twenty-five percent (25%) of premium tax due on a quarterly basis.

6.4.1. The premium tax surcharge shall continue for such additional quarters as may be determined by the division.

6.4.2. The division shall not be required to impose a premium tax surcharge on every tier three employer. The division shall consider, but not be limited to, the following criteria, in its determinations of (1) whether to impose a premium tax surcharge, (2) what percentage of premium tax surcharge to apply to the quarterly premium tax, and (3) how long the premium tax surcharge shall be applied to the quarterly premium tax:

a. Whether the employer has been properly classified for purposes of determining the employer's experience modification factor;

b. Whether the experience modification factor is an effective method of determining the employer's mandated status under this rule;

c. Whether the employer is engaged in a unique employment category such that there is no suitable classification for purposes of determining the employer's experience modification factor;

d. Whether the employer has experienced significant changes in the number of payroll employees so as to adversely affect the employer's experience modification factor;

e. Whether the employer has experienced a catastrophic loss or other anomalous circumstance so as to adversely affect the employer's experience modification factor; and

f. Whether the employer is in substantial compliance with the requirements of a target program employer.

6.4.3. Upon the imposition of premium tax surcharges, the division shall provide a written notification as to the reasons for such a determination. The written determination shall include such factors as the division deems appropriate, including but not limited to, the five factors outlined in the previous paragraph.

6.5. Reclassification. The division shall review the employer's performance criteria at the conclusion of each review period. Such review shall be completed within thirty (30) days following the receipt of the employee's quarterly report for the second quarter of each review period.

6.5.1. After full participation as a tier three employer for two (2) consecutive review periods and after demonstration by the employer of measurable improvement, the tier three employer shall be reclassified. If the employer's evaluation criteria meets the requirements for classification as a target program employer, the employer shall be subject to the requirements for a target program employer. If the employer's evaluation criteria meets the requirements for classification as a focus program employer, the employer shall be subject to the requirements of a focus program employer.

6.5.2. If the employer's performance criteria is below the evaluation criteria for a focus program employer, the employer shall not be subject to further review, so long as the employer's performance criteria remains below the evaluation criteria for a focus program employer.

§85-23-7. New subscriber employers.

7.1. All employers without the requisite experience to calculate an experience modification factor shall be afforded a new subscriber experience modification factor for purposes of classification as a focus program employer or target program employer under the provisions of this rule.

7.1.1. A new subscriber experience modification factor shall be calculated for each employer at the close of the second full quarter after business start-up or after the effective date of this rule, if the employer has accumulated two (2) full quarters of claims experience, whichever is applicable.

7.1.2. The new subscriber experience modification factor shall be calculated in a similar manner as other experience modification factors.

7.2. The new subscriber employer shall be classified as a focus program employer or target program employer based upon the new subscriber experience modification factor and projected premium tax size as applied to table 85-23A.

7.3. The new subscriber employer shall be notified of its classification and subject to the same duties, responsibilities and requirements as other employers of like classification under the provisions of this rule.

§85-23-8. General provisions: classification and reclassification.

8.1. Discretion. In matters involving classification and reclassification, the division shall not be required to classify or reclassify an employer solely as a result of the measurement of performance criteria. The division shall have discretion to consider other relevant issues as contained in the provisions of 10.4.1 of this rule.

§85-23-9. Notification

The division shall notify each employer classified or reclassified as a focus program employer, target program employer, or tier three employer under the provisions of this rule by certified mail addressed to the employer at the employer's last known residence or place of business: Provided, That, if an employer is represented by an attorney or other representative, then notice to the attorney or other representative shall be sufficient notice to the party so represented.

§85-23-10. Administrative Protests and hearings.

10.1. Protest. An employer may protest any order, decision, designation or redesignation made under the provisions of this rule.

10.2. Petition. In order to preserve its right to protest, the employer must file a written petition with the division, stating the order or decision protested and the exact nature of the issue in controversy. In the written petition, the employer must designate a person or entity to receive official notices related to the protest and the employer must provide the address of the person or entity. The written petition must be received by the division within thirty (30) days after the employer receives notice of the objectionable order or decision or within sixty (60) days of the date of the objectionable order or decision, regardless of notice. This period may not be extended or waived.

10.3. Acknowledgement. Within thirty (30) days after receiving the written protest, the division shall issue a notice acknowledging the protest and providing an opportunity for hearing. Filing of a written protest temporarily stays the order or decision protested until a decision is rendered on such protest by a hearing examiner: Provided that, such temporary stay shall not exceed ninety (90) days from the date of the order or decision protested unless the employer is not provided an opportunity for hearing within that ninety (90) day period, in which case the temporary stay shall not exceed that date which the employer is provided an opportunity for hearing. The division may grant a further stay provided that the safety of the employer's employees is not compromised.

10.4. Subsequent administrative hearing proceedings shall be in accordance with 85 C.S.R. 7 "Rules for Selected Hearings."

10.4.1. In classification and reclassification contested matters, the hearing examiner shall consider all relevant evidence relating to the totality of the circumstances surrounding the contested issue. Relevant issues for the hearing examiner's consideration shall include, but not be limited to the following:

a. Whether the employer has been properly classified for purposes of determining the employer's experience modification factor;

b. Whether the experience modification factor is an effective method of determining the employer's mandated status;

c. Whether the employer is engaged in a unique employment category such that there is a suitable classification for purposes of determining the employer's experience modification factor;

d. Whether the employer has experienced significant changes in the number of payroll employees so as to adversely affect the employer's experience modification factor; and

e. Whether the employer has experienced a catastrophic loss or other anomalous circumstance so as to adversely affect the employer's experience modification factor.

§85-23-11. Experience modification factors.

Calculations of experience modification factors for purposes of this rule shall not affect ratemaking procedures under the provisions of any other division rule, except to the extent that such other rule expressly incorporates the provisions of this rule.

§85-23-12. Forms.

The division in conjunction with the compensation programs performance council shall prepare and make available to all mandated employer standardized forms for reports required under the provisions of this rule.

§85-23-13. Severability

If any provision of these rules or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not effect the provisions or the applications of these rules which can be given affect without the invalid provisions or application and to this end the provisions of these rules are declared to be severable.

Table 85-23A

STANDARDS FOR LOSS CONTROL ACTIVITIES

Experience Modification Factors Exceeding Given Value Qualify Employer for Given Group

3-Year Premium (in dollars)		Tier One Focus Group	Tier Two Target Group
From	To		
0	4,999	1.40	1.50
5,000	12,499	1.50	1.60
12,500	24,999	1.60	1.70
25,000	49,999	1.70	1.80
50,000	& Over	1.80	1.90

Note: Non-merit-rated employers would have calculation analogous to experience modification factor calculation.
Note: Using Table 85-23A

(1) Calculate the premium tax paid over the last three full calendar years. This calculation will yield the three year premium as contained in the two columns at the left side of the table.

For example during the calendar years 1992, 1993, and 1994, XYZ, Inc., paid $32,850 in premium tax. XYZ, Inc., falls with the $25,000 to $49,999 premium range.

(2) Obtain the experience modification factor from the workers' compensation division.

For example. XYZ, Inc., has an experience modification factor of 1.73.

(3) Determined whether XYZ, Inc., falls within the focus employer or target employer groups by examining the two columns on the right side of the table.

(4) For an employer who falls within the three year premium tax range of $25,000 to $49,999:

   (a) Focus program employers have experience modification factors equal to or exceeding 1.70 which do not equal or exceed 1.80 and

   (b) Target program employers have experience modification factors equal to or exceeding 1.80.

(5) In the instant case, XYZ, Inc., with a premium tax range from $25,000 to $49,999 and an experience modification factor of 1.73 falls within the focus program employer group.