



Pennsylvania Compensation Rating Bureau

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May 1, 2015

VIA FEDERAL EXPRESS 2-DAY DELIVERY

The Honorable Teresa Miller
Insurance Commissioner
Commonwealth of Pennsylvania
Insurance Department
1311 Strawberry Square
Harrisburg, PA 17120

Attention: Mark J. Lersch
Director, Property and Casualty Bureau

RE: PCRB Filing No. 265 Proposed Effective October 1, 2015
Manual Revisions to Sections 1 and 2
(1) Revised Appeals Procedure
(2) Separate Payroll Records Definition

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Insurance Product Regulation
and Administration
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Pennsylvania
Insurance Department

Dear Commissioner Miller:

On behalf of the members of the Pennsylvania Compensation Rating Bureau (PCRB), I am filing herewith proposed revisions to the PCRB Workers Compensation Manual of Rules, Classifications and Rating Values for Workers Compensation and for Employers Liability Insurance (the Pennsylvania Manual). These revisions are proposed to be **effective 12:01 a.m., October 1, 2015** with respect to new and renewal policies having normal anniversary rating dates on or after that date.

Each of the proposals included in this filing are discussed in sequence below.

(1) Revised Appeals Procedure

The Pennsylvania Manual includes language pertaining to appeals from applications of the rating system (Section I, Rule XVI). With the benefit of periodic amendments, most notably revisions that were necessary to comply with statutory changes included in Act 44 of 1993, this procedure has been in place since 1981.

This filing proposes revisions to existing Manual language pertaining to appeals, with the following purposes:

- (a) To simplify language applicable to appeals by insured employers, and
- (b) To establish a procedure that will be applicable to insurance carriers which ultimately take issue with determinations of the PCRB concerning any application(s) of the rating system.

The proposed appeals procedure for insured employers will continue to comply with statutory provisions in Section 717 of the Workers' Compensation Act. The alternative procedure for insurance carriers (Dispute Resolution Conferences) recognizes that the language in Section 717 pertains to purchasers of workers compensation insurance, not sellers of this coverage.

The Honorable Teresa Miller
May 1, 2015
Page 2 of 2

The PCRB believes that the proposed procedures will be efficient, effective and equitable for all parties.

Proposed revisions to Pennsylvania Manual language are attached as Exhibit 1.

(2) Definition of "Separate Payroll Records"

The concept of "separate payroll records" is cited in numerous places in the Pennsylvania Manual's classification procedures and rules. This filing capitalizes on past instances in which the PCRB has encountered misunderstandings or misinterpretations of the meaning of this term, and proposes a definition so that the meaning of this term may be better and more consistently understood in the marketplace.

Proposed revisions to Pennsylvania Manual language are attached as Exhibit 2.

Please contact me if I may answer any questions regarding this filing for you or your staff.

Sincerely,



Timothy L. Wisecarver
President

TLW/jf

Enclosures:

Exhibit 1 - Proposed Revisions to Pennsylvania Manual Language to Provide for the Revised Appeals Procedure

Exhibit 2 - Proposed Revisions to Pennsylvania Manual Language to Provide for the Definition of Separate Payroll Records

SECTION 1 – UNDERWRITING RULES

CHANGES

RULE XV – FINAL EARNED PREMIUM DETERMINATION

- A. Actual Payroll
- B. Premium Determination
- C. Audit Rights to Carrier
- D. Authorized Classifications

RULE XVI – APPEALS FROM APPLICATION OF THE RATING SYSTEM PROCEDURE

RULE XVII – MEMBER CARRIER DISPUTES (DISPUTE RESOLUTION CONFERENCE)

RULE ~~XVII~~XVIII – PROFESSIONAL EMPLOYER ORGANIZATIONS, PROFESSIONAL EMPLOYER AGREEMENTS AND PROFESSIONAL EMPLOYER SERVICES

- A. Definitions
- B. Policy Issuance
- C. Methods of Coverage
 - 1. Option One
 - 2. Option Two
 - 3. Option Three
- D. Client Policy Obligations
- E. PEO Policy Obligations
- F. Cancellation Provisions
 - 1. Cancellation by the Professional Employer Organization (PEO)
 - 2. Cancellation by Client
 - 3. Notification Requirements

SECTION 1

RULE XVI – APPEALS FROM APPLICATION OF THE RATING SYSTEM PROCEDURE

[A. Any policyholder ... Subcommittee.]

A. Any policyholder aggrieved by the application of the Rating System of the Pennsylvania Compensation Rating Bureau (PCRB) may appeal such application to the PCRB in accordance with this appeals procedure (Procedure).

"Rating System" is defined to include all workers compensation insurance pricing programs subject to rules set forth in this Manual.

The appeal must be filed directly with the PCRB during the policy period with respect to which the application is made, or within twelve months after the termination thereof. Appeals filed beyond this time period will not be granted.

EXCEPTION: An appeal for revision of losses used in experience or merit rating is governed by the Revision of Losses provisions of this Manual.

B. An aggrieved party who wants to appeal a PCRB decision concerning an application of the Rating System must first submit a written request for review to the PCRB, together with all information in support of its appeal. PCRB staff will review the request and supporting information. To make certain the facts of an appeal are fully agreed upon, PCRB staff may make written inquiries to the appellant and/or survey the appellant's Pennsylvania workplace(s). The appellant shall provide complete responses to such inquiries, and shall provide full access to such workplace(s). The PCRB will then notify the appellant in writing that the PCRB staff's review has been completed and provide to the appellant (or its designated representative) the PCRB staff's final decision.

C. If the appellant is aggrieved following completion of the PCRB staff's review and final decision, the appellant has the right to present its appeal to an Appeals Subcommittee of the PCRB's Classification and Rating Committee (Appeals Subcommittee). An appeal may be taken to the Insurance Commissioner only after the appellant has first exhausted its rights pursuant to this Procedure.

D. An Appeals Subcommittee convened to consider an appeal shall be comprised of an equal number of employer representative members and insurer members of the PCRB's Classification and Rating Committee, none of whom may have a direct pecuniary interest in the aggrieved party's appeal.

E. All appeals must be filed with the PCRB no later than thirty (30) days from the date of the PCRB staff's final decision and meet the following requirements:

1. The appeal must be in writing.
2. The appeal must set forth in detail the nature of the complaint, including:
 - All reasons for believing the PCRB decision to be in error.
 - All documents in support of the appeal.
 - The specific nature of the relief desired.
3. The aggrieved party (or its designated representative) must agree to appear before an Appeals Subcommittee of the Classification and Rating Committee.

F. Following receipt of an appeal of a PCRB final decision, the PCRB will notify the appellant of the time and place of the Appeals Subcommittee meeting at which the matter will be heard.

G. The procedure at the Appeals Subcommittee hearing is informal:

- The appellant may make an oral presentation of its case or rely solely upon the written material previously submitted to the PCRB in connection with the appeal.
- PCRB staff may present testimony and other information to the Appeals Subcommittee relevant to the appeal.
- The appellant and/or the PCRB may also present third-party witnesses and documentary evidence relevant to the appeal.
- The appellant and the PCRB shall have the opportunity to direct questions to any witness who has testified before the Appeals Subcommittee.
- After all testimony and other evidence have been presented, the hearing shall be declared closed by the Chair of the Appeals Subcommittee.
- After the hearing is closed, the Appeals Subcommittee shall arrive at its decision in executive session. Attendance at the executive session is limited to members of the Appeals Subcommittee and PCRB legal counsel.

- The effective date of the decision will be specifically determined by the Appeals Subcommittee, in accordance with Manual rules.
- H.** A record of meeting of the Appeals Subcommittee will be kept by PCRB staff. As hearings before the Appeals Subcommittee are informal, there is no stenographic, audio or video record. The Appeals Subcommittee decision will be included in the record of meeting and retained in the records of the PCRB.
- I.** Travel expenses for the appellant will be reimbursed in the same manner as for members of the Appeals Subcommittee. Reimbursement is payable on a per appeal basis, i.e., multiple reimbursements will not be paid when more than one appellant representative attends the Appeals Subcommittee meeting.
- J.** The decision of the Appeals Subcommittee shall be set forth in writing, include the basis for the decision, and be sent to the appellant no later than thirty (30) days after the hearing.
- K.** An appellant is not required to be represented by an attorney. However, an appellant has the right, at the appellant's expense, to be represented by an attorney. An appellant who is represented by an attorney shall notify the PCRB of such representation in writing in advance of the hearing, and shall furnish the PCRB with the attorney's name, mailing address and e-mail address. After the PCRB has received such notification from an appellant, all subsequent correspondence related to the appeal will be directed to the attorney designated by the appellant.
- L.** Notice regarding the time and place of the Appeals Subcommittee hearing as well the Appeals Subcommittee decision in the matter will be provided to the appellant (or its attorney) in writing, via e-mail (if agreed upon) or first class mail.
- M.** Appeals from a final decision of the Appeals Subcommittee must be filed with the Insurance Commissioner in writing within thirty (30) days of the mailing date of the Appeals Subcommittee's decision. The appeal to the Insurance Commissioner should be directed to the Administrative Hearings Office and must set forth the basis for the appeal and the grounds being relied upon by the appellant.
- N.** Nothing contained in this Procedure shall prevent efforts to resolve any dispute on an informal basis at any stage of these proceedings.

RULE XVII – MEMBER CARRIER DISPUTES (DISPUTE RESOLUTION CONFERENCE)

- A.** A member carrier aggrieved by a final decision of PCRB staff concerning an application of the rating system (Staff Decision) may submit a written request for a conference with the PCRB President and/or Senior Vice President (Dispute Resolution Conference) to discuss the Staff Decision. This request must be submitted within 30 days of the Staff Decision, and must state the basis of the grievance and the remedy being sought.
- B.** Within 30 days following the Dispute Resolution Conference, the PCRB President or Senior Vice President shall issue a written communication (Conference Decision) to the aggrieved member carrier communicating any change(s) to the Staff Decision and any remedy on account of such change(s). If the member carrier remains aggrieved by the Conference Decision, the member carrier may appeal the Staff Decision, as sustained or modified by the Conference Decision, to the Insurance Commissioner within 30 days of the mailing date of the Conference Decision. Such appeals should be directed to the Insurance Department's Administrative Hearings Office.
- C.** A copy of the Conference Decision will be sent to the impacted policyholder if the Conference Decision changes the Staff Decision. To the extent the policyholder is aggrieved by the Conference Decision, the policyholder may pursue an appeal of the Conference Decision via the appeals procedure outlined in Rule XVI. In the context of Rule XVI procedures the Conference Decision is considered the PCRB final decision.

RULE XVIII – PROFESSIONAL EMPLOYER ORGANIZATIONS, PROFESSIONAL EMPLOYER AGREEMENTS AND PROFESSIONAL EMPLOYER SERVICES

Balance of the Rule remains unchanged.

SECTION 2

CHANGES

**INDEX
GENERAL AUDITING & CLASSIFICATION INFORMATION**

Automobile Dismantlers
Automobile Service/Gasoline Station
Bakery Products Distribution
Ceramic Shops
Classification and Test Audit Inquiries
Clearing Of Land
Commission Salespersons
Computer And/Or Software Consulting Businesses
Drivers
Employment Contractor - Temporary Staffing
Executive Officers - Classification Assignment
Executive Supervisors - Construction Or Erection - 951
Frozen Or Frosted Food Products Mfg.
Home Health Care Services
Homeowners' Association
Hotel Or Motel Operations
Independent Contractor, Owner/Operator Or Employee
Manufactured (Mobile) Home Vs. Modular Home
Minimum Wage Procedure
Nursing Home, Personal Care Home and Residential Care Facility Classification Guideline
Per Diems
Prefabricated Metal Building Erection – Prefabricated Sheet Metal and Silo Erection - Metal
Prevailing Wage Payments
Product Assembly Definition
Property Management Firms
Regular and Frequent
Retail Store With Manufacturing Concern
Self-Service Gasoline Stations And Convenience Grocers
Separate Payroll Records – Definition
Shop Repair Operations
Ski Resorts
Snow Plowing and/or Removal
Truck Stops
Volunteer Fire Departments And/Or Volunteer Fire Companies - Workers' Compensation Insurance Options
Wholesale/Retail Mail Order House Or Internet Sales - Definitions
Wrecking Or Demolition Or Building Moving Or Raising Project

SELF-SERVICE GASOLINE STATIONS AND CONVENIENCE GROCERS

In classifying a combination self-service gasoline station and convenience grocer Code 917 shall apply at each location when the sale of merchandise, other than gasoline, exceeds 10% of the total annual receipts for the location. Self-service gasoline stations exclusively engaged in the retail sale of gasoline or where the cashier may also sell items such as cigarettes and/or snack food only shall be assigned to Code 816.

SEPARATE PAYROLL RECORDS – DEFINITION

In limited circumstances, (Section 1, Rule IV, Paragraph C.5), the payroll of an employee may be divided between two or more classifications, provided the employer has maintained the requisite separate payroll records. Specifically, the employer's payroll records should be supported by original time cards, hourly labor postings, labor cost entries or time book entries which show separately, both by individual employee and in summary by operations performed, the remuneration earned by such employee. A standard format for the records is not required but these records must be original and they must be summarized, i.e., totaled, by operation. This allows employers the flexibility to use a variety of methods and technology to record the required information. The accuracy of the summaries must be verifiable by reviewing the original, individual employee records. Data elements must be contemporaneously recorded (originating at the same time) and summarized. If the employer fails to keep complete and accurate records as provided in this definition, the entire remuneration of the employee shall be assigned to the highest valued classification applicable to any part of the work performed by the employee. A permissible payroll separation should be based on a time card(s) or invoice(s) showing the actual number of hours worked for a given employee. Payroll may not be divided by means of percentages, averages, estimates, or any basis other than specific time cards, hourly labor postings, labor cost entries or time book entries.

EXAMPLES:

An employee is engaged in performing the fabrication of iron railings (Code 413) in the shop and also assisting in the installation of ornamental iron railings (Code 658.) The amount of time this employee spends in installing railings should be based on a time card or invoice that show time spent in the installation activity. Usually, an employer uses the total job cost in labor of installation work and transcribes that amount on a separate record (job book, general ledger) for each installation job completed during the workweek. Then the amounts are totaled and recorded on a weekly payroll record or a separate card is completed that just shows the installation payroll. The insured totals the amounts on a weekly or monthly basis.

Other employers record the total hours for each installation by employee for each job and then multiply those hours by the employee's hourly rate. The amount is recorded and entered on a separate section of the employee's earnings card or in the payroll book under the employee's name. This process is also completed week by week with the insured totaling the amounts on a weekly or monthly basis.

Types of records reviewed include but are not limited to payroll records, master control reports, and job cost records.

SHOP REPAIR OPERATIONS

Risks having shop operations that involve the repair of a product for which there is no repair classification are to be assigned to the classification that applies to the manufacture of the product, unless such repair work is specifically referred to by another classification phraseology, footnote or definition in the Manual.

Balance of the Rule remains unchanged.