

**COAL MINE COMPENSATION RATING BUREAU  
OF PENNSYLVANIA**

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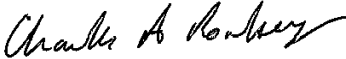
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July 21, 2015

**COMPENSATION CIRCULAR CM-463**

To: All Coal Mine Compensation Insurance Carriers

From: Charles A. Romberger, Executive Director 

RE: Proposal CM-2-2015  
Revisions to the Pennsylvania Coal Mine Workers Compensation Manual  
(1) Revised Appeals Procedure  
(2) Separate Payroll Records Definition  
Approved Effective: October 1, 2015

On July 13, 2015, the Coal Mine Compensation Rating Bureau of Pennsylvania (Bureau) submitted the captioned filing for approval to the Pennsylvania Insurance Commissioner. The Bureau submitted these revisions to maintain consistency with the Pennsylvania Compensation Rating Bureau (PCRB) as announced in PCRB Circular No. 1644. The changes are identified below:

(1) Revised Appeals Procedure

In Section One – Underwriting Rules, Rule IV – Classifications – E. Appeal from Classification Assignments Procedure is deleted in its entirety.

To Section One – Underwriting Rules, Rule XV – Appeals from Application of the Rating System Procedure and Rule XVI – Member Carrier Disputes (Dispute Resolution Conference) were added. See Exhibit 1 for Revisions to Section One.

(2) Separate Payroll Records Definition

To Section Two – Classifications and Loss Costs, a definition for Separate Payroll Records was added. See Exhibit 2 for Revisions to Section Two.

The Bureau notes that these changes are effective October 1, 2015, and anticipates incorporating these changes into the Manual to be effective October 1, 2015.

If you have any questions about this proposal, please contact the Bureau by calling 717-238-5020 or by emailing [cromberger.cmcrb@verizon.net](mailto:cromberger.cmcrb@verizon.net).

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Attachments: Exhibit 1 and Exhibit 2

Revisions to Section One – Underwriting Rules

Deletion:

Delete RULE IV – CLASSIFICATIONS – E. APPEAL FROM CLASSIFICATION ASSIGNMENTS PROCEDURE in its entirety.

Additions:

RULE XV – APPEALS FROM APPLICATION OF THE RATING SYSTEM PROCEDURE

- A. Any policyholder aggrieved by the application of the Rating System of the Coal Mine Compensation Rating Bureau (CMCRB) may appeal such application to the CMCRB 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 CMCRB 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 CMCRB decision concerning an application of the Rating System must first submit a written request for review to the CMCRB, together with all information in support of its appeal. CMCRB staff will review the request and supporting information. To make certain the facts of an appeal are fully agreed upon, CMCRB 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 CMCRB will then notify the appellant in writing that the CMCRB staff’s review has been completed and provide to the appellant (or its designated representative) the CMCRB staff’s final decision.
- C. If the appellant is aggrieved following completion of the CMCRB staff’s review and final decision, the appellant has the right to present its appeal to an Appeals Subcommittee of the CMCRB’s Actuarial/Classification 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 CMCRB's Actuarial/Classification Committee, none of whom may have a direct pecuniary interest in the aggrieved party's appeal.
- E. All appeals must be filed with the CMCRB no later than thirty (30) days from the date of the CMCRB 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 CMCRB 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 Actuarial/Classification Committee.
- F. Following receipt of an appeal of a CMCRB final decision, the CMCRB 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 CMCRB in connection with the appeal.
  - CMCRB staff may present testimony and other information to the Appeals Subcommittee relevant to the appeal.
  - The appellant and/or the CMCRB may also present third-party witnesses and documentary evidence relevant to the appeal.
  - The appellant and the CMCRB 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 CMCRB 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 CMCRB 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 CMCRB.
- 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 CMCRB of such representation in writing in advance of the hearing, and shall furnish the CMCRB with the attorney's name, mailing address and e-mail address. After the CMCRB 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 XVI – MEMBER CARRIER DISPUTES (DISPUTE RESOLUTION CONFERENCE)

- A. A member carrier aggrieved by a final decision of CMCRB staff concerning an application of the rating system (Staff Decision) may submit a written request for a conference with the CMCRB 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 CMCRB 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 XV. In the context of Rule XV procedures the Conference Decision is considered the CMCRB final decision.

## Revisions to Section Two – Classifications and Loss Costs

Addition:

**SEPARATE PAYROLL RECORDS – DEFINITION**

In limited circumstances, 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.

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