

**COAL MINE COMPENSATION RATING BUREAU  
OF PENNSYLVANIA**

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EXECUTIVE DIRECTOR

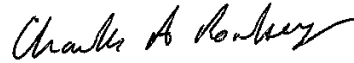
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May 6, 2016

**COMPENSATION CIRCULAR CM-467**

To: All Coal Mine Compensation Insurance Carriers

From: Charles A. Romberger, Executive Director



RE: Audit Noncompliance Charge Filings  
Manual Rules & Endorsement  
Effective January 1, 2017

The CMCRB has filed and the Insurance Department has approved revisions to the Manual Rules, Endorsements and Statistical Plan regarding the implementation of Pennsylvania specific rules on the adoption of countrywide changes being filed by the National Council on Compensation Insurance, Inc. (NCCI). The CMCRB filed these revisions to maintain consistency with the practices of both the Pennsylvania Compensation Rating Bureau and NCCI.

The attached manual pages show the filed and approved changes in tracked formatting. The revised Manual will be updated on our website at a later date.

Should you have any questions regarding this topic, please contact the Bureau.

CAR:car

Attachments

**RULE XII – FINAL EARNED PREMIUM DETERMINATION**

**A. ACTUAL PAYROLL**

Final earned premium for the policy shall be determined on actual, instead of estimated, payroll or other premium basis.

**B. PREMIUM DETERMINATION**

The determination of final earned premium is governed by the rules and classifications in this Manual and the carrier’s rates, and is subject to modification by applicable rating plans.

**C. AUDIT RIGHTS OF CARRIER**

The insurance carrier has the right to compute earned premium based on an examination of original payroll records and books of account of the insured, in accordance with Part Five – Premium, Section G (Premium-Audit) of the Standard Policy.

**D. AUTHORIZED CLASSIFICATIONS**

Classifications which are not expressed on the policy shall not be used in auditing the payroll of any risk upon which a Card has been issued by the Coal Mine Compensation Rating Bureau of Pennsylvania, unless upon application to the Bureau the Card shall be revised.

**E. AUDIT NONCOMPLIANCE CHARGE**

1. If the employer does not comply with Part Five—Premium, Section G. (Audit) of the policy, the employer will be considered noncompliant with the policy terms and conditions. When this occurs, the carrier may apply an Audit Noncompliance Charge (ANC) subject to the conditions in this rule. The charge is determined by applying the ANC multiplier to the ANC basis shown in the table below:

<u>ANC Basis</u>	<u>ANC Multiplier</u>
<u>Estimated Annual Premium</u>	<u>Two times</u>

2. On a multistate policy, the ANC applies only to the exposure in the states where an employer is noncompliant with an audit and where this ANC rule is approved for use.
3. The ANC is a premium charge and is applied in accordance with the applicable state premium algorithm. The ANC is not part of standard premium.
4. The application of the ANC is subject to the following conditions:
  - a. Carriers must comply with all applicable state laws and/or regulations related to audits of workers compensation insurance policies.
  - b. The Audit Noncompliance Charge Endorsement is optional. When used, the Audit Noncompliance Charge Endorsement and/or applicable state-specific endorsement must be attached to the policy at inception of the policy term being audited.
  - c. The carrier must make two attempts to obtain the audit information and/or complete the audit. At each attempt, the carrier must notify the employer regarding the specific required records and the amount of the ANC to be applied if the employer continues to refuse to comply with the audit.
  - d. The carrier must adequately document the audit file regarding the above attempts to obtain the required audit information.
5. This ANC rule applies to mail/email, telephone, computer (remote access), and physical audits, unless otherwise provided by state law.
6. The ANC may be applied to guaranteed cost policies as well as retrospectively rated policies.
7. The scenarios listed below may occur and are treated as follows:

<u>If an ANC is applied and the employer...</u>	<u>Then the carrier...</u>
<u>Pays the ANC and later allows the audit</u>	<ul style="list-style-type: none"> <li>• <u>Performs the final audit and determines the final policy premium based on the results of the audit; and</u></li> <li>• <u>Refunds the ANC to the employer, or applies the ANC amount to any outstanding balance on the policy</u></li> <li>• <u>Submits a unit statistical correction report to remove the ANC from the previously reported Unit Statistical data.</u></li> </ul>
<u>Does <b>not</b> pay the ANC but later allows the audit</u>	<u>Performs the final audit and determines the final policy premium based on the results of the audit</u>
<u>Pays the ANC but does <b>not</b> later allow the audit</u>	<u>Does not change the previously reported:</u> <ul style="list-style-type: none"> <li>• <u>Unit Statistical data</u></li> <li>• <u>Noncompliance transactions</u></li> </ul>
<u>Does not pay the ANC and does <b>not</b> later allow the audit.</u>	<u>Does not change the previously reported:</u> <ul style="list-style-type: none"> <li>• <u>Unit Statistical data</u></li> <li>• <u>Noncompliance transactions</u></li> </ul>

8. The ANC must be reported, including applicable corrections, in accordance with the Bureau’s Statistical Plan.

**RULE XIII – ANTHRACITE UNDERGROUND MINE RESCUE TEAMS**

A. GENERAL EXPLANATION

Anthracite Underground Mine Rescue Teams, formed under the direction of the Pennsylvania Department of Environmental Protection or the Federal Mine Safety and Health Administration, may be available in the event of a disaster or mine catastrophe. Such teams shall be classified as Anthracite Underground Mining.

B. PROVISIONS FOR CLAIM PAYMENT

The Pennsylvania and Federal Occupational Disease provisions for claim payment for Anthracite Underground Mine Rescue Teams will be the same as the provisions for claim payment in effect for Anthracite Underground Mining. However, due to the hazardous nature of the work, the provision for claim payment for Workers’ Compensation coverage, Code 1010, only, will be increased by 100% (2 x Manual Provision for Claim Payment), and not subject to experience or retrospective rating.

**RULE XIV – PROFESSIONAL EMPLOYER ORGANIZATIONS, PROFESSIONAL EMPLOYER AGREEMENTS AND PROFESSIONAL EMPLOYER SERVICES**

A. DEFINITIONS – PROFESSIONAL EMPLOYER ORGANIZATION (PEO)

The following words and phrases when used in this rule shall have the meanings given to them in this section unless the context clearly indicates otherwise. (These definitions are intended to be consistent with the definitions used in Act 102 of 2012.):

- Client – Any person who enters into a Professional Employer Agreement with a Professional Employer Organization.
- Co-employer – A Professional Employer Organization or Client.

**TABLE OF CONTENTS**

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**ENDORSEMENTS**

<b>Form Name</b>	<b>Form Number</b>
Anniversary Rating Date Endorsement	WC 00 04 02
Catastrophe (Other Than Certified Acts of Terrorism) Premium Endorsement	WC 00 04 21 D
Certified Safety Committee Endorsement – Pennsylvania	WC 37 04 04B
Deductible Endorsement – Pennsylvania	WC 37 04 03
Exclusion of Employees Endorsement – Pennsylvania	WC 37 03 03
Exclusion of Executive Officers Endorsement – Pennsylvania	WC 37 03 10 C
Experience Rating Modification Factor Endorsement	WC 00 04 03
Federal Mine Safety and Health Act Coverage Endorsement	WC 00 01 02 B
Longshore and Harbor Workers’ Compensation Act Coverage Endorsement	WC 00 01 06A
Pending Rate Change Endorsement	WC 00 04 04
Pennsylvania Act 86-1986 Endorsement	WC 37 06 03A
<u>Pennsylvania Audit Noncompliance Charge Endorsement</u>	<u>WC 37 04 01</u>
Pennsylvania Multiple Coordinated Policy Endorsement	WC 37 03 11
Pennsylvania Notice	WC 37 06 02
Policy Period Endorsement	WC 00 04 05
Premium Discount Endorsement	WC 00 04 06
Professional Employer Organization (PEO) Client Exclusion Endorsement	WC 00 03 22 A
Professional Employer Organization (PEO) Exclusion Endorsement	WC 00 03 21 A
Professional Employer Organization (PEO) Extension Endorsement	WC 00 03 20 B
Rate Change Endorsement	WC 00 04 07
Sole Proprietors, Partners, Officers and Others Coverage Endorsement	WC 00 03 10
Special Pennsylvania Endorsement – Inspection of Manuals	WC 37 06 01
Statutory Employer Endorsement – Pennsylvania	WC 37 03 09A
Terrorism Risk Insurance Program Reauthorization Act Disclosure Endorsement	WC 00 04 22 B
Voluntary Compensation and Employers Liability Coverage Endorsement	WC 00 03 11A
Waiver of Our Right to Recover from Others Endorsement	WC 00 03 13

Following the General Information section on the next page, the forms are presented in order by form number.

WC 37 04 01

Workers Compensation and Employers Liability Insurance Policy

PENNSYLVANIA AUDIT NONCOMPLIANCE CHARGE ENDORSEMENT

Part Five – Premium, Section G. (Audit) of the Workers Compensation and Employers Liability Insurance Policy is revised by adding the following:

If you do not allow us to examine and audit all of your records that relate to this policy, and/or do not provide audit information as requested, we may apply an Audit Noncompliance Charge (ANC).

The charge is determined by applying the ANC Multiplier to the ANC Basis shown in the table below:

<u>ANC Basis</u>	<u>ANC Multiplier</u>
<u>Estimated Annual Premium</u>	<u>Two times</u>

If you allow us to examine and audit all of your records after we have applied an ANC, we will remove the ANC and revise your premium in accordance with our manuals and Part 5 – Premium, E. (Final Premium) of this policy.

The application of the ANC is subject to the following conditions:

- a) Carriers must comply with all applicable state laws and/or regulations related to audits of workers compensation insurance policies.
- b) The Audit Noncompliance Charge Endorsement is optional. When used, the Audit Noncompliance Charge Endorsement and/or applicable state-specific endorsement must be attached to the policy at inception of the policy term being audited.
- c) The carrier must make two attempts to obtain the audit information and/or complete the audit. At each attempt, the carrier must notify the employer regarding the specific required records and the amount of the ANC to be applied if the employer continues to refuse to comply with the audit.
- d) The carrier must adequately document the audit file regarding the above attempts to obtain the required audit information.

These ANC conditions apply to mail/email, telephone, computer (remote access), and physical audits, unless otherwise provided by state law.

The scenarios listed below may occur and are treated as follows:

<u>If an ANC is applied and the employer...</u>	<u>Then the carrier...</u>
<u>Pays the ANC and later allows the audit</u>	<ul style="list-style-type: none"> <li>• <u>Performs the final audit and determines the final policy premium based on the results of the audit; and</u></li> <li>• <u>Refunds the ANC to the employer, or applies the ANC amount to any outstanding balance on the policy</u></li> </ul> <p><u>Submits a unit statistical correction report to remove the ANC from the previously reported Unit Statistical data.</u></p>
<u>Does <b>not</b> pay the ANC but later allows the audit</u>	<u>Performs the final audit and determines the final policy premium based on the results of the audit</u>
<u>Pays the ANC but does <b>not</b> later allow the audit</u>	<p><u>Does not change the previously reported:</u></p> <ul style="list-style-type: none"> <li>• <u>Unit Statistical data</u></li> <li>• <u>Noncompliance transactions</u></li> </ul>
<u>Does not pay the ANC and does <b>not</b> later allow the audit.</u>	

**Note:** The Audit Noncompliance Charge Endorsement must be attached to the policy at inception of the policy term being audited.

(3) In those cases where the experience is reported on a split basis due to a change in experience rate and in other cases where more than one unit report card is required for filing the experience under a given policy, the "Risk Totals" shall be shown on the last car of the series.

8. Miscellaneous Premium

a. Premium Subject to Experience Rating to be reported on any of the blank lines above the line designated "A-Total Premium".

(1) Premium for Higher Limits under Coverage B to be reported in the aggregate in the "Premium" column.

The Pennsylvania Coal Mine Workers Compensation Manual provides that the premium for limits in excess of the standard limits shall be determined by applying the appropriate factors to the total premium, at the manual rates, any applicable experience or merit rates, and/or retrospective rating. In cases where the reporting of excess premium developed for higher limits on voluntary compensation policies occurs, the Bureau rules state that premium for coverage in excess of standard limits is provided by an appropriate increase in the carrier's rate.

In those cases where the additional premium resulting from the application of the appropriate limit factor to total premium is less than the corresponding minimum premium established by the carrier for such increased limits, the corresponding minimum premium shall be shown.

(2) If premium collected is partially due to special endorsements (such as that for former self-insured coal mine operators), that portion collected from application of the endorsement will be shown on lines "D", "E", "F", or "G" but will not be included in the total.

(3) Short Rate Penalty Premium – Where policies are cancelled prior to the normal expiration, the cancellation date shall be entered in the block captioned "Expiration Date" and the symbol "X" entered in the block for condition 93. When a policy is cancelled short rate the payroll and manual premium by classification shall be reported on the basis of the actual exposure. The additional premium resulting from application of the short rate cancellation table to such modified premium extended to full annual basis and reported in the "Premium" column. The "Exposure" and "Manual Rate" columns shall be left blank.

b. Audit Noncompliance Charge (ANC) – Code 9757

For policies where the carrier has chosen to apply an audit noncompliance charge because the employer would not allow the carrier to examine and audit its records.

The premium for Code 9757 is a flat charge applied after the Employer Assessment (Code 0938).

Note When the Exposure on the 1<sup>st</sup> report includes Code 9757, report the Estimated Audit Code as "U" in the applicable Policy Conditions, Estimated Audit Code field.

If subsequent to reporting Statistical Code 9757, and the final policy premium is determined in accordance with the Basic Manual rules, the statistical code and its accompanying charge must be removed. Additionally, the Estimated Audit Code must be changed to "N" and the exposure and premium must reflect the final audit.

9. Correction Reports – Method of Reporting

a. Errors. Whenever there is an error of any kind on a report submitted to the Bureau, whether such error is discovered by the carrier or by the Bureau, an appropriate revised experience card shall be filed. The appropriate forms to be used for revised reportings

"Y" = Policy is a multistate policy.  
"N" = Policy is not a multistate policy.

c. Interstate Rated Indicator

"Y" = Policy is interstate rated.  
"N" = Policy is not interstate rated.

d. Estimated Exposure Indicator

"Y" = Exposures expressed on unit report are estimated.  
"N" = Exposures expressed on unit report are not estimated.

"U" = Insured has refused or not responded to requests to provide carrier with access to books and records. Audit has been closed as uncooperative. Exposures expressed on unit report are estimated.

Note: When the Exposure on the 1<sup>st</sup> report includes Code 9757, report the Estimated Audit Code as "U" in the applicable Policy Conditions, Estimated Audit Code field.

If subsequent to reporting Statistical Code 9757, and the final policy premium is determined in accordance with the Basic Manual rules, the statistical code and its accompanying charge must be removed. Additionally, the Estimated Audit Code must be changed to "N" and the exposure and premium must reflect the final audit.

e. Retrospective Rated Indicator

"Y" = Policy is retrospective rated.  
"N" = Policy is not retrospective rated.

f. Canceled Mid-Term Indicator

"Y" = Policy has been canceled mid-term.  
"N" = Policy has not been canceled mid-term.

B. Exposure Information Codes

1. Update Type

Report the one position alphabetic code that identifies the activity of an exposure record.

<u>Code</u>	<u>Description</u>
P	Previously Reported
R	Revised

2. Exposure Coverage

Report the code indicating the Act (law) under which the exposure for this record's class code is associated.

<u>Code</u>	<u>Description</u>
01	State or Federal Act, excl. USL & HW
02	USL & HW "F" or non "F" Coverage
10	Voluntary Coverage Not Mandatory by State Act

C. Loss Information Codes

1. Injury Type

<u>Code</u>	<u>Description</u>
01	Death
02	Permanent Total Disability
05	Temporary Total or Temporary Partial Disability
06	Medical Only
09	Permanent Partial Disability

2. Claim Status

<u>Code</u>	<u>Description</u>
0	Open
1	Closed