

**COAL MINE COMPENSATION RATING BUREAU
OF PENNSYLVANIA**

COMMERCE BUILDING – SUITE 403
300 NORTH SECOND STREET
HARRISBURG, PENNSYLVANIA 17101

CHARLES A. ROMBERGER
EXECUTIVE DIRECTOR

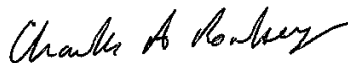
TELEPHONE/FAX
717-238-5020

May 20, 2020

COMPENSATION CIRCULAR CM-484

To: All Coal Mine Compensation Insurance Carriers

From: Charles A. Romberger, Executive Director



RE: Revisions due to COVID-19 (Coronavirus) Pandemic
Manual Rate/Rule Filing
Statistical Plan Filing

Effective April 1, 2020 (For Policies in force on March 1, 2020 through December 31, 2020) which may be amended to an earlier or later date as circumstances warrant in consultation with Pennsylvania regulatory authorities

The CMCRB has filed and the Insurance Department has approved revisions to the Manual and Statistical Plan Rules regarding the topic referenced above. The CMCRB made these revisions to maintain consistency with the PCRB and NCCI. In particular, the CMCRB made these revisions in response to PCRB Circular No. 1740 that announced the changes made by the PCRB in PCRB Filing No. 309 and PCRB Filing No. 310.

The CMCRB submitted these revisions as Proposal CM-1-2020 that consisted of a two-page cover letter and seven-page attachment. The entirety of this Proposal is attached to this Circular for your reference.

For the time being, the CMCRB is treating Proposal CM-1-2020 and the revisions in Proposal CM-1-2020 as a separate addendum or supplement to the Manual, Effective April 1, 2020. The CMCRB is adopting this treatment noting the possibility of changes in the future to the Effective Date provision noted above.

This Circular will be available on our website in the near future at:

<http://www.cmcrbpa.com/Circulars.html>

Any questions should be directed to the CMCRB via email to

cromberger.cmcrb@verizon.net

CAR:car

Attachments

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EXECUTIVE DIRECTOR

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May 15, 2020

The Honorable Jessica K. Altman
Insurance Commissioner
Pennsylvania Insurance Department
1311 Strawberry Square
Harrisburg, PA 17120

Attention: Michael McKenney, Actuarial Supervisor, Property & Casualty Bureau

RE: Proposal CM-1-2020
Manual Rate/Rule Filing (Items #1 - #4)
Statistical Plan Filing (Item #5)
Revisions due to COVID-19 (Coronavirus) Pandemic
Regarding PCRB Filing No. 309 and PCRB Filing No. 310
To Be Effective: April 1, 2020

Dear Commissioner Altman:

On behalf of the members of the Coal Mine Compensation Rating Bureau of Pennsylvania (Bureau), the Bureau submits revisions to the Pennsylvania Coal Mine Workers Compensation Manual (Manual). These revisions are being made to keep the Bureau's Manual as consistent as possible with the provisions in the Basic Manual and Statistical Plan Manual of the Pennsylvania Compensation Rating Bureau (PCRB).

This Proposal contains two types of revisions.

- 1) The changes to Manual Rules that are identified in Items #1 - #4 in the Attachment to this Proposal. These changes involve Sections One, Five and Six of our Bureau's Manual.
- 2) The changes to the Statistical Plan that are identified in Item #5 in the Attachment to this Proposal. These changes involve the Statistical Plan Section of our Bureau's Manual.

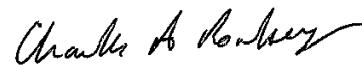
All of these revisions reflect the changes that the PCRB made under PCRB Filing No. 309 and under PCRB Filing No. 310, except the additions related to the Wages Paid for Idle Time. The additional provisions for Wages Paid for Idle Time are the adoption of existing PCRB provisions.

This Proposal consists of this cover letter and Attachment A. Attachment A provides our Bureau's proposed responses to the five numbered revisions noted in PCRB Circular No. 1740. Since we believe that the Department has copies of PCRB Filing No. 309, PCRB Filing No. 310, PCRB Circular No. 1740 and our Bureau's current Manual, we have not included copies of these documents with this Proposal.

To maintain consistency in provisions between the PCRB and our Bureau, we request the Department's approval of this Proposal with same effective dates as those granted to the PCRB. Consequently, we request that this Proposal be approved effective April 1, 2020 (For Policies in force on March 1, 2020 through December 31, 2020) which may be amended to an earlier or later date as circumstances warrant in consultation with Pennsylvania regulatory authorities.

If you have any questions about this Proposal or need copies of the referenced documents, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles A. Romberger". The signature is fluid and cursive, written in a professional style.

Charles A. Romberger
Executive Director

Enclosures:

- 1) Attachment A

Proposed Responses to the five numbered revisions noted in PCRB Circular No. 1740:

Proposed Response to Item #1: Our Bureau proposes to adopt the new COVID19 CORONAVIRUS EXCEPTION language into the Clerical Office Employees definition in our Manual in Section One – Rule IV.B.3.a.

Current language for Section One – Rule IV.B.3.a.:

Clerical Office Employees – Code 953 – are employees whose duties are confined to keeping the books and records of the insured and conducting correspondence or who are engaged wholly in the office work where such books and records are kept of such correspondence is conducted, having no other duty of any nature in or about the insured’s premises.

Proposed language for Section One – Rule IV.B.3.a.:

Clerical Office Employees – Code 953 – are employees whose duties are confined to keeping the books and records of the insured and conducting correspondence or who are engaged wholly in the office work where such books and records are kept of such correspondence is conducted, having no other duty of any nature in or about the insured’s premises.

COVID19 CORONAVIRUS EXCEPTION:

An employee’s job duties may be temporarily reclassified to Code 953 – Clerical Office Employees during any emergency orders, laws or regulations issued due to COVID–19 (Coronavirus), if separate, accurate, verifiable records are maintained. If such records are not maintained, the employee is assigned to the classification applicable to their duties prior to any emergency orders, laws or regulations issued due to the COVID–19 (Coronavirus) pandemic. Once normal business operations resume, appropriate classifications should be applied.

This exception is for policies in force on March 1, 2020 through December 31, 2020 which may be amended to an earlier or later date as circumstances warrant in consultation with Pennsylvania regulatory authorities.

Proposed Response to Item #2: Our Bureau proposes not to adopt any changes related to temporary classification reassignment because of temporary changes in business operations because of COVID-19. Our Bureau does not anticipate many, if any, changes in the business operations of Pennsylvania’s Coal Mine operators. However, any reported changes of this nature would be addressed under the currently approved rules in our Manual (especially Section One – Rule IV.C.3.) and involve a normal classification review in cooperation with the PCRB.

Proposed Response to Item #3: Our Bureau proposes to adopt the new provisions for Payments to Paid Furloughed Employees and to adopt the existing provisions for Wages Paid for Idle Time.

Payments to Paid Furloughed Employees – Current language: This issue is not currently addressed by our Manual.

Payments to Paid Furloughed Employees – Proposed language: We propose the following addition to Section One – Rule V.B.3. Exclusions:

- q. Payments made by an employer or any public governmental entity to paid furloughed employees as a result of federal, state, and/or local emergency orders, laws or regulations, issued due to the COVID-19 (coronavirus) pandemic which impact an employer’s staffing or business operations. However, any appropriated funds or loans received by an employer as authorized by any law or regulation, or public governmental entity, that are used by an employer specifically to retain or hire working employees are not excluded.

Item q. is applicable to policies in force on March 1, 2020 through December 31, 2020 which may be amended to an earlier or later date as circumstances warrant in consultation with Pennsylvania regulatory authorities.

Payments to Paid Furloughed Employees During Federal, State, and/or Local Emergency Orders, Laws, or Regulations Issued Due to the COVID-19 (Coronavirus) Pandemic

1. For purposes of this rule, “paid furloughed employees” and “payments to paid furloughed employees” are defined within this rule. “Paid furloughed employees” means employees who continue to receive payments during a temporary layoff or an involuntary leave and are not performing any work duties for an employer.
2. “Payments to paid furloughed employees” means payments made by an employer or any public Governmental entity to paid furloughed employees as a result of federal, state, and/or local emergency orders, laws or regulations, issued due to the COVID-19 (coronavirus) pandemic which impact an employer’s staffing or business operations. Such payments do not include any appropriated funds or loans received by an employer as authorized by any law or regulation, or public governmental entity, that are used by an employer specifically to retain or hire working employees.
3. Payments to paid furloughed employees must be assigned to Code 1212, in accordance with the Statistical Plan. Payments to paid furloughed employees made in accordance with this rule are excluded from the premium, experience rating and merit rating calculations only if the employer keeps separate, accurate, and verifiable records. If separate, accurate, and verifiable records are not maintained, payroll is assigned to the classification for work normally performed by the employee prior to any emergency orders, laws, or regulations issued due to the COVID-19 (coronavirus) pandemic.

4. If an employee is requested to perform any duties for an employer, the employee is not deemed a paid furloughed employee for any period of time they are performing duties for the employer. If the employee is not deemed a paid furloughed employee, payroll must be assigned to the classification applicable to the work being performed in accordance with Rule IV.A. of this Manual.
5. This rule is effective for policies in force on March 1, 2020 through December 31, 2020, which may be amended to an earlier or later date as circumstances warrant in consultation with Pennsylvania regulatory authorities.

Wages Paid for Idle Time – Current language: This issue is not currently addressed by our Manual.

Wages Paid for Idle Time – Proposed language: We propose the following addition to Section One – Rule V.B.2. Inclusions:

u. Wages Paid for Idle Time

Idle time is downtime that occurs when employees are not working and the employer pays the employees for the time not worked. Idle time does not include “paid furloughed employees” or “payments to paid furloughed employees” as defined in Rule V.B.3.q.

- a. The entire amount of wages paid for idle time shall be included as payroll.
- b. Wages paid for idle time due to the following causes shall be assigned in their entirety to the classification which applies to the work normally performed by the employee involved:
 1. Suspension or delay of work on account of weather conditions.
 2. Delays while waiting for materials.
 3. Delays while waiting for another contractor to complete certain work.
 4. Delays arising from breakdown of equipment.
 5. "Stand-by" time where employees such as operators of cranes, hoists or other equipment are on the job but their active services are not required continuously.
 6. Special union requirements or agreements between employer and employees calling for pay for idle time under specified circumstances.
 7. Other cause of similar nature.
- c. Wages paid to key employees of construction, erection or stevedoring risks, such as superintendents, foremen or engineers, for periods during which no jobs are in progress, shall be assigned to the classification applicable to the work which each one normally performs.
- d. The entire amount of wages paid for idle time to an employee engaged in work other than construction, erection or stevedoring must be assigned without division to the classification which normally applied to that employee.

Proposed Response to Item #4: Our Bureau proposes to adopt provisions to exclude losses applicable and attributable to COVID-19 in our Experience and Merit Rating Plans.

Current Language – Section Five – Section (Rule) V.4.

LOSSES

Incurred losses shall be tabulated by calendar year, described below:

- a. Total losses as reported. Losses incurred shall be on a gross basis before the application of the deductible, when such coverage is provided.
- b. Reported losses on claims up to the primary limiting value (basic).
- c. Reported losses on claims between the primary limiting value and the secondary limiting value (ratable excess).
- d. Reported losses on claims exceeding the secondary limiting value (non-ratable excess).

Proposed Language – Section Five – Section (Rule) V.4.

LOSSES

Incurred losses shall be tabulated by calendar year, described below:

- a. Total losses as reported. Losses incurred shall be on a gross basis before the application of the deductible, when such coverage is provided.
- b. Reported losses on claims up to the primary limiting value (basic).
- c. Reported losses on claims between the primary limiting value and the secondary limiting value (ratable excess).
- d. Reported losses on claims exceeding the secondary limiting value (non-ratable excess).

Exception: All claims reported with Catastrophe Code No. 12 shall be excluded from experience rating calculations. Refer to Pennsylvania Coal Mine Workers Compensation Manual Statistical Plan (“Statistical Plan”) for the definition of losses included under Catastrophe Code No. 12.

Current Language – Section Five – Section (Rule) V.6.

REVISION OF LOSSES

It shall not be permissible to revise values because of department or judicial decision or because of developments in the nature of injury between two valuation dates except in cases:

- a. where loss values are included or excluded through mistake other than error of judgment, or
 - b. where a claim is declared non-compensable (see note below),
 - c. where the claimant or carrier has recovered in an action against a third party, or
 - d. where a claim or a portion of a claim is ruled or officially declared fraudulent.
- ...(subsequent provisions have been omitted)

Proposed Language – Section Five – Section (Rule) V.6.

REVISION OF LOSSES

It shall not be permissible to revise values because of department or judicial decision or because of developments in the nature of injury between two valuation dates except in cases:

- a. where loss values are included or excluded through mistake other than error of judgment, or
- b. where a claim is declared non-compensable (see note below),
- c. where the claimant or carrier has recovered in an action against a third party,
- d. where a claim or a portion of a claim is ruled or officially declared fraudulent, or
- e. where a claim should have been reported with Catastrophe Code No. 12.
...(subsequent provisions have been omitted)

Current Language – Section Six – Section (Rule) II.1.

Compensable Lost Time Accident shall be a covered traumatic claim resulting in a payment or reserve for indemnity/funeral benefits. Claims subject to a policyholder deductible shall be considered compensable for the purpose of this section.

Proposed Language – Section Six – Section (Rule) II.1.

Compensable Lost Time Accident shall be a covered traumatic claim resulting in a payment or reserve for indemnity/funeral benefits. Claims subject to a policyholder deductible shall be considered compensable for the purpose of this section.

Exception: All claims reported with Catastrophe Code No.12 shall be excluded from merit rating calculations.

Proposed Response to Item #5: Our Bureau proposes to adopt revisions to our Statistical Plan related to the new COVID-19 coding additions and estimated audit coding provisions.

Current Language for Section II.B.8.c.: This section is not currently in use.

Proposed Language for Section II.B.8.c.: We propose to add the following provision.

Paid Furloughed Employees – Code 1212

Paid furloughed employees means employees who continue to receive payments during a temporary layoff or an involuntary leave and are not performing any work duties for an employer. Effective March 1, 2020, payments by any employer or any public governmental entity to paid furloughed employees as a result of federal, state, and/or local emergency orders, laws or regulations, issued due to the COVID-19 (coronavirus) pandemic which impact an employer's staffing or business operations must be reported to Statistical Code 1212 – Paid Furloughed Employees. Such payments do not include any appropriated funds or loans received by an employer as authorized by any law or regulation, or public governmental entity, that are used by an employer specifically to retain or hire working employees.

Code 1212 may be used as a Statistical Code to report the payments only. If a carrier is unable to report this experience as a statistical code, please contact the CMCRB to discuss reporting requirements.

Payments reported to Code 1212 are excluded from premium only if the employer keeps separate, accurate and verifiable records.

For any claims attributable to an employee occurring prior to or after a temporary layoff or an involuntary leave, report losses to the classification for work normally performed by the employee that corresponds to the employee's payroll. No claim can be reported to Code 1212 – Paid Furloughed Employees.

The expiration date of this code will be December 31, 2020, which may be amended to an earlier or later date as circumstances warrant in consultation with Pennsylvania regulatory authorities.

Current Language for Section II.C.11.:

Catastrophe Number (Cat. No.)

Any accident resulting in two or more reported claims must be reported as a catastrophe. In reporting catastrophes, all claims (compensable as well as non-compensable and contract medical) resulting from this accident shall be designated by placing the numeral "1" in the column captioned Cat. No. opposite each claim. If there is more than one catastrophe under the policy, each succeeding catastrophe should be designated by means of a separate serial number "2", "3", etc. A separate series of catastrophe numbers shall be used for each policy.

Proposed Language for Section II.C.11.:

Catastrophe Number (Cat. No.)

Any accident resulting in two or more reported claims must be reported as a catastrophe. In reporting catastrophes, all claims (compensable as well as non-compensable and contract medical) resulting from this accident shall be designated by placing the numeral "1" in the column captioned Cat. No. opposite each claim. If there is more than one catastrophe under the policy, each succeeding catastrophe should be designated by means of a separate serial number "2", "3", etc., up to and including "10". After the number "10" is assigned the next number in the sequence will reprocess to number "1". Numbers "11" through "99" are reserved for ISO or WCIO assigned catastrophe codes. A separate series of catastrophe numbers shall be used for each policy.

Current Language for Section III.A.6.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 1st 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.

Proposed Language for Section III.A.6.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.

Notes:

- (1) When the Exposure on the 1st 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.
- (2) If final premium based on audited exposure cannot be reported due to federal, state and/or local emergency orders, laws, or regulations issued due to the COVID-19 (coronavirus) pandemic which impact an employer’s staffing or business operations report the applicable exposure and premium in the class code(s) and the Estimated Audit Code as an “N”, This code is effective March 1, 2020. The expiration date of this rule will be December 31, 2020, which may be amended to an earlier or later date as circumstances warrant in consultation with Pennsylvania regulatory authorities.