



Pennsylvania Compensation Rating Bureau

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February 4, 2003

BUREAU CIRCULAR NO. 1456

To All Members of the Bureau:

Re: **ADDITIONAL INFORMATION – MANUAL LANGUAGE AMENDMENTS**

APRIL 1, 2003 LOSS COST REVISION APPROVAL

As detailed in Bureau Circular No. 1454 of January 30, 2003, the Insurance Commissioner has approved Proposal C-345, the April 1, 2003 Loss Cost Filing. Please refer to that circular for details of this approval.

This circular will provide detail for the various Manual language additions or revisions originally included in the filing that were approved as originally submitted.

1) Revisions to Section 1, Rule IV – Classifications

This rule has been revised to articulate prevailing Bureau practices pertaining to questions of employment status.

The Manual revisions are shown below with deleted wording bracketed and new wording underlined.

SECTION 1

CHANGES

RULE IV – CLASSIFICATIONS

C. ASSIGNMENT OF CLASSIFICATIONS

9. [Classification Appeals] Carrier Determinations of Employment Status

[The Bureau assignment of an individual risk to a particular classification may be appealed pursuant to Rule XVI, APPEALS FROM APPLICATION OF THE RATING SYSTEM PROCEDURE, Section 1 of this Manual.] A carrier's determination of a person's employment status (including but not necessarily limited to questions regarding a person's designation as an

employee, independent contractor, uninsured subcontractor, leased employee or temporary staff) is not subject to the Bureau's review or approval. Where a carrier's determination of a person's employment status results in a request for authorization of a different or additional classification(s), such request must be made in writing. The Bureau will determine the applicability of any requested classification(s) in accordance with the classification guidelines set forth in this Manual. Classifications so approved by the Bureau shall be applied to any policy to which the carrier's determination of the person's employment status applies, if such policy expired or was terminated not more than 12 months before the date on which the Bureau received the carrier's written request.

This rule for determining the policy(ies) to which the approved classification(s) shall be assigned will apply regardless of whether the authorization of the classification(s) increases or decreases premium for the affected policy(ies). This rule shall govern in the event this rule conflicts with any other rule in this Manual.

10. [Mercantile Business/Stores] Classification Appeals

[For mercantile businesses, such as stores or dealers, the single applicable store or dealer classification is determined separately for each location.] The Bureau's assignment of an individual employer to a particular classification may be appealed pursuant to Rule XVI, APPEALS FROM APPLICATION OF THE RATING SYSTEM PROCEDURE, Section 1 of this Manual.

11. Mercantile Businesses/Stores

For mercantile businesses, such as stores or dealers, the single applicable store or dealer classification is determined separately for each location.

2) Revisions to Sections 2 and 5 – Classes 993 and 994

These revisions have been made to recognize workers compensation insurance options made available to volunteer fire departments, volunteer fire companies and/or volunteer ambulance corps by virtue of an opinion provided by the Department of Labor & Industry.

The Manual revisions are shown below with deleted wording bracketed and new wording underlined.

SECTION 2

CHANGES

993 VOLUNTEER AMBULANCE CORPS.

The per Corps (Company) charge shall be applied on a per location basis, regardless of the number of ambulances garaged at each location.

[This classification may be used only on a policy covering Class 980.]

994 Firefighter - VOLUNTEER FIRE COMPANY

[This classification may be used only on a policy covering Class 980.]

SECTION 5

Rulings and Interpretations

This entire Ruling and Interpretation entry is new wording.

VOLUNTEER FIRE DEPARTMENTS AND/OR VOLUNTEER FIRE COMPANIES – WORKERS' COMPENSATION INSURANCE OPTIONS

In Pennsylvania the municipality in which a volunteer fire department(s) and/or volunteer fire company(ies) is based is generally construed to be the statutory employer of the members of the volunteer fire department or volunteer fire company who perform the services of a volunteer firefighter, and for that reason it has been the practice for the municipality in which the volunteer fire department(s) and/or volunteer fire company(ies) is based to provide workers' compensation insurance coverage for such members. The Department of Labor and Industry (Department) has rendered a written opinion on whether a volunteer fire department and/or volunteer fire company may be separately insured pursuant to the Department's review of the Pennsylvania Workers' Compensation Act (Act), Section 601 (a)(1), and the interpretative case law thereon. The Department's opinion states that there is nothing in the language of the Act or the case law accompanying Section 601 (a)(1) that indicates a volunteer fire department and/or company would be prohibited from obtaining a workers' compensation policy separate from that of the municipality in which it is based. In other words, in the Department's opinion a volunteer fire department and/or volunteer fire company may purchase a workers' compensation insurance policy that is separate from the workers' compensation policy of the municipality in which it is based. The Department's opinion also states that the above analysis applies to volunteer ambulance corps or volunteer rescue or lifesaving squads, because there is no language in Section 601 (a)(2) or (a)(3) of the Act or in the case law thereon that prohibits a volunteer ambulance corps or a volunteer rescue or lifesaving squad from obtaining workers' compensation insurance separate from the municipality in which it is based.

The classification applicable to a separate workers' compensation insurance policy purchased by a volunteer fire department and/or volunteer fire company for volunteers/members covered by such policy would be Code 994. The classification applicable to a separate workers' compensation insurance policy purchased for the volunteers/members of a volunteer ambulance corps or volunteer rescue or lifesaving squad would be Code 993.

If an entity (typically a volunteer fire department and/or volunteer fire company) provides fire, ambulance or rescue and lifesaving squad services in combination and that entity purchases a single, separate workers' compensation policy, then each service provided must be separately classified. In such instances the applicable classifications for the single, separate workers' compensation policy would be both Codes 993 and 994.

If an entity (again typically a volunteer fire department and/or volunteer fire company) has a policy for its employees (e.g., bartenders for a social club or food servers and/or bartenders for a banquet hall), Code 993 and/or Code 994 may be added to that policy for the coverage of the volunteer firefighters and/or volunteer ambulance corps and/or volunteer rescue or lifesaving squad persons.

Where the firefighting service is provided by a combination of volunteer firefighters and paid firefighters insured by a policy purchased by the municipality in which the volunteer fire department or volunteer fire company and the paid firefighters are based, the municipality's

volunteer firefighting premium is prorated pursuant to the procedure delineated in the Section 2 rating value listing pages. The volunteer firefighting premium charge shall be prorated in the same manner in the event a policy separate from the municipality's policy is purchased for the (Code 994) volunteer fire fighting exposure. When ambulance or rescue lifesaving service is provided by an independent, non-municipal entity staffed by a combination of paid ambulance, rescue or lifesaving persons and volunteer ambulance, rescue or lifesaving persons, assign Code 807 to the payroll of the paid ambulance, rescue or lifesaving persons and Code 993 for the volunteers. The Code 993 per corps premium shall be prorated in the same manner cited above for firefighting service provided by the combination of volunteer firefighters and paid firefighters.

THE MUNICIPALITY IN WHICH A VOLUNTEER FIRE DEPARTMENT AND/OR VOLUNTEER FIRE COMPANY IS BASED WILL GENERALLY BE CONSTRUED TO REMAIN THE VOLUNTEERS' STATUTORY EMPLOYER

In the event that a volunteer fire department and/or volunteer fire company does not purchase a separate workers' compensation policy for its volunteers/members or in the event that such separately purchased policy lapses, is canceled or otherwise ceases to be effective for any reason, then the municipality in which the volunteer fire department and/or volunteer fire company is based should secure workers' compensation insurance coverage for the volunteer fire department's and/or volunteer fire company's volunteers/members. This same provision would also apply to volunteer ambulance corps or rescue or lifesaving squads.

The Bureau expresses no opinion as to the potential liability of a municipality for workers' compensation benefits or otherwise to members of a volunteer fire company, ambulance corps or rescue or lifesaving squad when there exists separate workers' compensation coverage for such members pursuant to another entity's insurance.

MUNICIPALITY IN WHICH A VOLUNTEER FIRE DEPARTMENT AND/OR VOLUNTEER FIRE COMPANY IS BASED DEFINED

The term "the municipality in which the volunteer fire department and/or volunteer fire company is based" shall be defined as any incorporated political subdivision of the Commonwealth smaller than a county (e.g., city, borough, township or town) wherein a volunteer fire department and/or volunteer fire company is headquartered. This definition also applies to volunteer ambulance corps or volunteer rescue or lifesaving squads.

In the event of a merger of two or more previously separate volunteer fire departments and/or volunteer fire companies garaged in two or more separately incorporated political subdivisions, the municipality in which a volunteer fire department and/or volunteer fire company is based shall be that participating incorporated political subdivision designated by the parties as the headquarters of the new, merged volunteer fire departments and/or volunteer fire companies. This procedure also applies to merged volunteer ambulance corps or volunteer rescue or lifesaving squads.

SUMMARY OF THE DEPARTMENT OF LABOR AND INDUSTRY'S
(DEPARTMENT) OPINION

The following is a summary of the Department's opinion, and it is based in part on discussions with the Department after the Department issued the opinion. You should not rely on this summary as advice concerning the legal obligation of a person to maintain workers' compensation coverage.

The Pennsylvania Compensation Rating Bureau has asked the Department for an opinion with respect to whether a volunteer fire department and/or volunteer fire company may obtain workers' compensation coverage as an actual employer separate from the coverage of the municipality in which the volunteer fire department and/or volunteer fire company is based. A second issue is whether a volunteer ambulance corps or a volunteer rescue or lifesaving squad may also pursue workers' compensation coverage separate from the municipality in which it is based. In the Department's opinion a volunteer fire department and/or volunteer fire company or a volunteer ambulance corps or volunteer rescue or lifesaving squad may separately obtain workers' compensation insurance as an employer independently from the municipality in which it is based.

There is nothing in the language of the Act or the case law accompanying Section 601 (a)(1) of the Act that indicates a volunteer fire department and/or volunteer fire company would be *prohibited* (emphasis in the original) from obtaining workers' compensation coverage separate from the municipality in which such department or company is based. The Commonwealth Court in one case sets forth that "volunteer fire fighters may have two employers for the purposes of the Act, the actual employer under whose supervision the fireman was working at the time of injury, and the statutory employer, i.e. the municipality upon whom rests the responsibility for providing workmen's compensation benefits under Section 601." Temple v. Milmont Fire Co., 525 A.2d 848, 850 (PA Cmwlth. 1987). Even though Temple does not require a volunteer fire department to obtain workers' compensation insurance separate from the municipality in which it is based, it certainly does not prohibit the volunteer fire department and/or volunteer fire company from doing so as an employer. See id.

The same analysis applies to volunteer ambulance corps or volunteer rescue or lifesaving squads – no language in the Act or in the case law accompanying Section 601 (a)(2) or (a)(3) *prohibits* (emphasis in the original) a volunteer ambulance corps or a volunteer rescue or lifesaving squad from attempting to obtain workers' compensation insurance separate from the municipality in which such corps or squad is based. The only indication the Department found that a volunteer ambulance corps or a volunteer rescue or life saving squad and a volunteer fire department and/or volunteer fire company would be treated differently in some respect is found in Scrima v. Swissvale Area Emergency Services, 599 A.2d 301 (Pa Cmwlth. 1991). The Commonwealth Court in Scrima declined to expand the rule that volunteer fire department and/or volunteer fire companies are entitled to governmental immunity to include volunteer ambulance corps or volunteer rescue or lifesaving squads.¹ However, the fact that governmental immunity cannot be applied to a volunteer ambulance corps or a volunteer rescue or life saving squad does not prohibit the volunteer ambulance corps or the volunteer rescue or life saving squad from obtaining workers' compensation separate from the workers'

¹ The Court in Temple reiterated the holding in Zern v. Muldoon, 516 A.2d 799 (Pa. Cmwlth. 1986) and Wilson v. Dravosburg Volunteer Fire Department, 516 A.2d 100 (Pa Cmwlth. 1986) that volunteer fire department and/or volunteer fire companies are "local agencies" entitled to governmental immunity under 42 Pa. C. S. 8541. See Temple, 525 A. 2d at 851.

compensation coverage of the municipality in which the volunteer ambulance corps or the volunteer rescue or life saving squad is based. It may even provide an additional argument in support of why a volunteer ambulance corps or a volunteer rescue or life saving squad should be permitted to obtain workers' compensation insurance coverage separate and apart from that of the municipality in which they are based. If the volunteer ambulance corps or volunteer rescue or life saving squad does not have governmental immunity, having separate workers' compensation coverage could give it an additional layer of protection against liability.

3) Revisions to Section 1, Rule IX – Special Conditions or Operations Affecting Coverage and Addition of Endorsement WC 37 04 04 B

This rule has been revised to be consistent with S.B. 813. A new endorsement form (copy attached) has been developed for use under the terms of this new law. These revisions and the new endorsement form are **effective December 9, 2002** on a new and renewal basis for policies having normal anniversary rating dates on or after that date to be consistent with the effective date of S.B. 813.

The Manual revisions are shown below with deleted wording bracketed and new wording underlined.

SECTION 1

RULE IX – SPECIAL CONDITIONS OR OPERATIONS AFFECTING COVERAGE

I. CERTIFIED SAFETY COMMITTEE CREDIT PROGRAM

1. Act 44 of 1993 mandates that the Department of Labor and Industry develop certification criteria for the operation of safety committees. (For certification criteria contact Pennsylvania Department of Labor and Industry.)
2. A 5% rate credit shall apply to the policy period beginning with the next normal anniversary rating date ~~[limited to five years]~~established by the Pennsylvania Compensation Rating Bureau and shall not apply to the policy period in effect when the certification is issued.
3. ~~[This credit can be applied five times to each Pennsylvania employer.]~~The 5% rate credit shall continue if the employer annually submits certification renewal affidavits acceptable to the Department of Labor and Industry.
4. Use Endorsement WC 37 04 04 B Certified Safety Committee Endorsement – Pennsylvania to show credit on appropriate policy.

Questions regarding these Manual revisions can be addressed to the Classification Department, Extension 460. Questions regarding the Certified Safety Committee Credit Program or the endorsement form should be addressed to Betty Ann Campbell, Extension 218 or bcampbell@pcrb.com.

These Manual revisions, as well as those reflecting approval of Proposal C-345 with respect to rating values effective April 1, 2003, will be updated on our website (<http://www.pcrb.com>) at a later date.

Timothy L. Wisecarver
President

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Remember to visit our web site at www.pcrb.com for more information about this and other topics.

WC 37 04 04B

CERTIFIED SAFETY COMMITTEE ENDORSEMENT – PENNSYLVANIA

The employer has received a certificate from the Pennsylvania Department of Labor and Industry specifying that the employer has established a safety committee in conformance with the Department's criteria.

This policy is subject to a 5% rate credit to recognize the certification of the safety committee. An employer must submit certification renewal affidavits annually to the Department of Labor and Industry in order to qualify for continuation of the 5% annual premium credit.

Note: This credit shall not apply to the policy period in effect when the certification is issued. The credit must be applied to the policy period beginning with the next normal anniversary rating date.