



Pennsylvania Compensation Rating Bureau

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August 2, 2012

BUREAU CIRCULAR NO. 1604

To All Members of the PCRB:

**Re: MANUAL REVISIONS – SECTIONS 1 AND 2
GENERAL AUDITING & CLASSIFICATION INFORMATION**

EFFECTIVE ON POLICY EXPIRATION BASIS ON OR AFTER JANUARY 1, 2013

The Pennsylvania Compensation Rating Bureau has filed and the Insurance Commissioner has approved Manual revisions to Section 1, Rule IV – Classifications, and Section 2, General Auditing & Classification Information. These revisions are **effective for policies expiring on or after 12:01 a.m., January 1, 2013.**

These Manual revisions are intended to more appropriately and effectively address determinations pertaining to premium obligations where questions of workers compensation coverage status arise. These changes remove from the PCRB Manual reference to some past decisions rendered prior to the establishment of existing appeals procedures and before the enactment of pertinent legislation in 2010 (Act 72) and 2011 (Act 20) which established criteria for determination of independent contractor status in the construction industry and provided for the voluntary issuance of workers compensation policies for sole proprietors, partners and members of limited liability companies, respectively.

The revisions also implement new language distinguishing the enterprise of deciding when premium obligations may or may not be imposed with respect to individuals when questions of employment status arise from the matter of deciding employment status for purposes of determining benefit eligibility.

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

SECTION 1

UNDERWRITING RULES

CHANGES

RULE IV – CLASSIFICATIONS

B. CLASSIFICATIONS

3. General Inclusions

a. Some operations..... and are:

CHANGES (continued)

S

(1) through (9) remain unchanged.

- (10) If a vehicle(s), including drivers (and the owner if the owner of the vehicle is also a driver), chauffeurs and helpers are [employed] under contract to an unrelated business and if the owner of such vehicle(s) has not insured his compensation obligation and furnished evidence of such insurance, the actual payroll of the drivers, chauffeurs and helpers shall be included in the payroll of the insured [employer]unrelated business at the proper carrier rating value(s) for the operations in which they are engaged. If [such]actual payroll cannot be obtained, one-third (1/3) of the total amount paid for the hire of such vehicles under contract shall be considered as payroll of the drivers, chauffeurs and helpers.

When the contract (1/3) amount.

[If the owner of the vehicle..... of the insured employer.]

(11) through (18) remain unchanged.

SECTION 2

GENERAL AUDITING & CLASSIFICATION INFORMATION

ADDITION

INDEPENDENT CONTRACTOR, OWNER/OPERATOR OR EMPLOYEE

Determinations of Premium Obligations Where Questions of Workers' Compensation Coverage Status Arise

Questions involving whether a person is an independent contractor, owner/operator or employee fall into an area of law for which consideration of many factors is potentially required in order to consider their entitlement to workers' compensation benefits. The Pennsylvania Compensation Rating Bureau (PCRB) does not make and has no authority to make determinations regarding the entitlement of any person(s) to workers' compensation benefits arising out of the course of activities related to any business or other entity, whether any such person has or has not been injured in the course of such activity. However, the PCRB will exercise authority over the issue of whether or not premiums are due for an individual(s) whose workers' compensation coverage status is questioned. This authority is different from finding independent contractor, owner/operator or employee status and is also different from establishing eligibility/ineligibility for benefits arising out of an accident or disease that has occurred or may occur, determinations which the PCRB specifically cannot render. The PCRB's procedure in making determinations regarding premium obligations is as follows:

A carrier insuring an entity to which a sole proprietor, partner, corporate officer or LLC member provides services as a subcontractor may not collect premium from the insured entity for that subcontractor if the subcontractor has or had a standard workers' compensation insurance policy covering the subcontractor for the entire period during which services were provided.

ADDITION (continued)

Further, a carrier insuring an entity to which a person provides services as a subcontractor may not collect premium for that person if the subcontractor is working in the capacity of an officer of a corporation in providing such services and has executed a written election not to be subject to the Workers' Compensation Act.

A carrier insuring an entity to which a person provides services as a subcontractor which does not meet either of the above criteria precluding collection of premium may either waive or collect premium from the insured entity for that subcontractor. Carrier decisions to waive or collect premium in such instances may consider a variety of factors, such as but not necessarily including or limited to the right of direction and control of the subcontractor by the entity to which services are provided, whether or not the subcontractor maintains general liability insurance coverage applicable to the services being provided or the possibility that the subcontractor may have additional workers. Carrier decisions in such regard are not subject to review by the PCRB.

DELETIONS

**PREMIUM COLLECTION FOR OWNER-OPERATORS
(BUREAU CIRCULAR 1073)**

Entry deleted in its entirety.

**PREMIUM COLLECTION FOR OWNER-OPERATORS
(BUREAU CIRCULAR 1118)**

Entry deleted in its entirety

Questions about these Manual revisions should be directed to Bruce Decker, Senior Vice President, at bdecker@pcrb.com or 215-320-4411.

The Manual will be updated on our website (www.pcrb.com) at a future 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.