



March 12, 1997

BUREAU CIRCULAR NO. 1352

To All Members of the Bureau:

Re: **REVISED APPEALS PROCEDURE**

As part of the February 1, 1997 Loss Cost Filing, the Pennsylvania Compensation Rating Bureau has filed and the Insurance Commissioner has approved revisions to the Appeals Procedure, effective 12:01 a.m., February 1, 1997. These revisions necessitated Manual amendments and broadened the scope of appeals from classification assignment only to include experience rating, merit rating, and Pennsylvania Construction Classification Premium Adjustment Program credits.

A copy of the revised Classification Appeals Procedure is attached to this circular and the enabling Manual revisions are shown below.

SECTION 1

<u>FROM</u>	<u>TO</u>
RULE IV - CLASSIFICATIONS	No change
C. ASSIGNMENT OF CLASSIFICATIONS	No change
1. through 7.	No change
8. Changing Classifications	No change
a. The Bureau is empowered to determine, revise or modify the classifications applicable to any individual insured. No application by the carrier or an insured to change the established classifications shall be considered by the Bureau until the carrier has issued and filed a copy of its policy Information Page written in accordance with the established classifications. The classifications for any policy	a. The Bureau is empowered to determine, revise or modify the classifications applicable to any individual insured. No <u>written</u> application by the carrier, <u>agent of record</u> or an insured to change the established classifications shall be considered by the Bureau until the carrier has issued and filed a copy of its policy Information Page written in accordance with the established classifications. The classifications

FROM

shall be subject to correction or modification[,] or both, if the Bureau finds by [inspection] or otherwise that the classifications shown in the policy are not properly applicable to the insured. No application to change the classification(s) for an insured on the ground that the risk has been improperly classified shall be considered by the Bureau unless such application is filed directly in writing with the Bureau by the insured or the carrier during the policy period with respect to which the application is made[,] or within twelve months after the termination thereof.

b. (1) A change . . .

. . . misclassification notice.

c. Any correction of a misclassification arising from discovery of a misrepresentation or omission by the insured, its agent, employees, officers or directors shall be applied effective the date upon which it would have applied had such misrepresentation or omission not been made.

d. The reallocation of payroll among an insured's authorized classifications or the Bureau requiring a carrier to report payroll under an insured's authorized classifications does not constitute a class change or correction.

TO

for any policy shall be subject to correction or modification or both, if the Bureau finds by survey or otherwise that the classifications shown in the policy are not properly applicable to the insured. No application to change the classification(s) for an insured on the ground that the risk has been improperly classified shall be considered by the Bureau unless such application is filed directly in writing with the Bureau by the insured, agent of record or the carrier during the policy period with respect to which the application is made or within twelve months after the termination thereof.

No change

c. Any correction of a misclassification arising from discovery by the carrier of a material misrepresentation or intentional omission by the insured, its agent, employees, officers or directors shall be applied effective the date upon which it would have applied had such material misrepresentation or intentional omission not been made. It is recommended that a carrier claiming material misrepresentation or intentional omission as contemplated in this Rule secure a declaratory judgment from the Common Pleas Court establishing same prior to proceeding with application of this Rule.

d. The reallocation of payroll by a carrier among an insured's authorized classifications or the Bureau requiring a carrier to reallocate payroll among an insured's authorized classifications or to report payroll under an insured's authorized classifications for an insured's current policy

FROM

TO

9. [Mercantile Business/Stores
For mercantile businesses, such as
stores or dealers, the classification is
determined separately for each location.]

or for the insured's prior policy within twelve
months after the termination thereof does
not constitute a class change or correction.

9. Classification Appeals
The Bureau's 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.

No current entry

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

**RULE IX - SPECIAL CONDITIONS OR
OPERATIONS AFFECTING COVERAGE**

No change

**H. PENNSYLVANIA CONSTRUCTION
CLASSIFICATION PREMIUM
ADJUSTMENT PROGRAM**

No change

1. The Pennsylvania . . .

No change

. . . 608 647 655 662 669 677

No current entry

2. Appeals
The Bureau's determination of an
individual risk's eligibility for or the percent-
age of credit under the Pennsylvania Con-
struction Classification Premium Adjust-
ment Program may be appealed pursuant to
RULE XVI, APPEALS FROM
APPLICATION OF THE RATING SYSTEM
PROCEDURE, Section 1 of this Manual.

SECTION 6

Experience Rating Plan

FROM

**GENERAL RULES
SECTION 1 - INSTRUCTIONS**

1. through 4.

No current entry

TO

No change

No change

5. Appeals

Any determination or decision of the Bureau for an individual risk under the Pennsylvania Experience Rating Plan may be appealed pursuant to RULE XVI, APPEALS FROM APPLICATION OF THE RATING SYSTEM PROCEDURE, Section 1 of this Manual.

SECTION 7

Merit Rating Plan

FROM

1. through 4.

No current entry

TO

No change

5. Appeals

Any determination or decision of the Bureau for an individual risk under the Pennsylvania Merit Rating Plan may be appealed pursuant to RULE XVI, APPEALS FROM APPLICATION OF THE RATING SYSTEM PROCEDURE, Section 1 of this Manual.

Manual reprints will be available at a later date.

Timothy L. Wisecarver
President

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Attachment

**PENNSYLVANIA COMPENSATION RATING BUREAU
RULES OF PROCEDURE FOR APPEALS OF THE RATING SYSTEM**

A. Any person, corporate or otherwise, aggrieved by an application of the rating system of the Pennsylvania Compensation Rating Bureau (the "Bureau") as approved by the Insurance Commissioner pursuant to the Insurance Company Law of May 17, 1921, P.L. 682, as amended, (the "Law") and the Pennsylvania Workers' Compensation Act of June 2, 1915, P.L. 736, as amended (the "Act") may appeal such application to the Bureau in accordance with this Procedure. "Rating System" is defined herein to include but is not necessarily limited to the following: the assignment by the Bureau of an individual risk to a particular classification, the continuation or discontinuation of an entity's (ies) previous experience to the experience rating of new ownership, an individual risk's eligibility for or the percentage of credit under the Pennsylvania Construction Classification Premium Adjustment Program, the discount or surcharge applied to a risk eligible for the Merit Rating Plan or any other workers compensation insurance pricing program filed by the Bureau with the Insurance Commissioner. Any appeal of the application of the rating system must be commenced by the aggrieved person within twelve (12) months of the policy period in which the application was made by filing an appeal directly with the Bureau in accordance with this Procedure.

B. A risk to which the Rating System is found on appeal by an Appeals Subcommittee to have been improperly applied as of the time of the aggrieved party's appeal to the Bureau in accordance with this Procedure, may have such application amended effective only for the policy currently in effect at the time the aggrieved party first submitted its appeal to the Bureau, in accordance with Paragraph F. hereof, and for the immediately preceding expired policy. In the case of a multiple year policy, application of the Rating System may be amended effective only for the policy year currently in effect at the time the aggrieved party first submitted its appeal to the Bureau, in accordance with Paragraph D. hereof, and for the policy year expiring no more than twelve (12) months prior to such appeal to the Bureau.

C. A risk for which application of the Rating System is revised as a result of a change in the Bureau's interpretation of the rating system approved for use by the Insurance Commissioner, may have such application amended effective as of the date determined by an Appeals Subcommittee of the Bureau's Classification and Rating Committee, which date may be prospective or retroactive as determined by the Appeals Subcommittee; provided however, that any retroactive effect shall not exceed the time period authorized in Paragraph B. hereof.

D. A risk for which application of the Rating System is revised as a result of a change to the rating system approved for use by the Insurance Commissioner, may have such application amended effective only as of the

date that the change to the rating system is filed by the Bureau and approved by the Insurance Commissioner.

E. Nothing in this Procedure shall permit a risk for which application of the Rating System is revised on a new and renewal basis only to have such application amended effective before the risk's next normal policy anniversary date.

F. An aggrieved party who wants to appeal an application of the rating system must first submit a written request for review thereof to the Bureau together with all information in support of its appeal. The Bureau staff shall review the request and supporting information. To make certain the facts of an appeal are fully agreed upon by the Bureau and the appellant, the Bureau staff may (as circumstances warrant) visit the appellant's Pennsylvania workplace(s). The Bureau shall notify the appellant in writing of its final decision resulting from the Bureau staff's review. If the appellant is still aggrieved by the rating system application following completion of the Bureau staff's review and final decision, the appellant shall have the right to present its appeal to an Appeals Subcommittee of the Bureau's Classification and Rating Committee in accordance with the provisions of this Procedure. A further appeal by an appellant of the Appeals Subcommittee decision may be taken to the Insurance Commissioner pursuant to Section 654 of the Law and Section 717 of the Act, only after the appellant has first exhausted its rights pursuant to this Procedure.

G. Any party aggrieved by a final decision of the Bureau staff pursuant to Paragraph F. shall have the right to appeal to an Appeals Subcommittee of the Classification and Rating Committee of the Bureau. An Appeals Subcommittee shall be comprised of an equal number of public and insurer members. Any Appeals Subcommittee member having a direct pecuniary interest in the aggrieved party's appeal shall recuse its representative from the appeal proceeding .

Such appeal must be received by the Bureau no later than ninety (90) days from the date of the Bureau staff's final decision referred to in Paragraph F.

H. All appeals pursuant to Paragraph G. hereof must be filed with the Bureau and must meet the following requirements:

1. The appeal must be in writing.
2. The appeal must set forth in detail the nature of the complaint, all reasons for believing the Bureau decision to be in error, all documents in support of the appeal, the specific nature of relief desired, and that the aggrieved party or its designated representative will appear before an Appeals Subcommittee of the Classification and Rating Committee at a to be determined hearing date.
3. In the event an appeal does not fulfill the requirements of Paragraph H. 2. hereof the Bureau shall

make a written request for the needed additional information from the aggrieved party, who shall have thirty (30) days to comply. Upon a written showing by the aggrieved party that the requested additional information cannot be provided within thirty (30) days, the Bureau may grant an extension consistent with the circumstances. If the requested additional information is not submitted within the specified time period, as extended, the appeal shall be dismissed.

I. Following receipt of an appeal to an Appeals Subcommittee of the Classification and Rating Committee, the Bureau will notify the appellant of the time and place of the Appeals Subcommittee meeting at which the matter shall be heard. If an appellant, after due notice pursuant to Paragraph K. hereof, fails to be present or represented at three such scheduled hearings, the appeal shall be dismissed.

J. The procedure at the hearing shall be as informal as possible and shall provide for the following steps:

1. The Chair of the Classification and Rating Committee shall introduce the appellant to the Appeals Subcommittee.

2. The appellant may at its option make an oral presentation of its case, or may rely solely upon the written material previously submitted to the Bureau in connection with the appeal.

3. Bureau staff members or consultants to the Bureau may present testimony and other information to the Appeals Subcommittee relating to the matter under consideration.

4. The appellant or the Bureau may also present witnesses and documentary evidence relevant to the appeal, and the appellant and the Bureau shall have the opportunity to direct questions to any witness who has testified before the Appeals Subcommittee on appeal.

5. After all testimony and other evidence have been presented, the hearing shall be declared closed by the Chair of the Committee and the appellant shall leave the hearing room. Such hearing may, in the discretion of the Appeals Subcommittee, be reopened at any time prior to the Appeals Subcommittee's decision.

6. After the hearing is closed, the Appeals Subcommittee shall arrive at its decision in executive session.

7. The decision shall be set forth in writing, shall specify all factual and other bases for the decision, and shall be sent to the appellant no later than thirty (30) days after the hearing.

8. The Appeals Subcommittee decision shall be included in the minutes of the meetings of the Classification and Rating Committee and be retained in the records of the Bureau.

9. The minutes of an Appeals Subcommittee of the Classification and Rating Committee meeting shall be kept by the Bureau staff. As hearings before the Appeals Subcommittee are as informal as possible there shall be no stenographic, audio or video record thereof.

10. If travel is required for the aggrieved person to be heard by the Appeals Subcommittee in person, the aggrieved person will be reimbursed for travel expenses in the same manner as members of the Appeals Subcommittee.

K. An appellant is not required to be represented by an attorney at any stage in any proceeding. However, an appellant has a right at its own expense to be represented by an attorney. An appellant who is represented by an attorney shall so notify the Bureau in writing and shall also furnish the Bureau with the attorney's name and mailing address. After the Bureau has received such notification from an appellant, subsequent papers in the proceeding to be served on such appellant shall be served only upon the attorney designated by the appellant.

L. Notices of any requirements for additional information pursuant to Paragraph H. 3. or of the time and place of the Appeals Subcommittee hearing shall be given to the appellant, or its attorney pursuant to Paragraph K., in writing personally or by certified mail (with return receipt). The notice of hearing shall be made at least ten (10) days in advance of such hearing, unless such notice is waived by the appellant or its attorney. When a meeting is adjourned to another time or place, written notice need not be given of the adjourned hearing if the time and place thereof are announced at the meeting during which all parties are present at which the adjournment is taken. All other notices, orders, papers, or communications, including a copy of the decision, may be served on an appellant by hand delivery or by regular first class mail to the appellant or its attorney at the last known mailing address provided to the Bureau.

M. During the course of all proceedings governed by this Procedure, the Appeals Subcommittee shall have the power to interpret and apply the foregoing Paragraphs, and such interpretation shall be binding upon the parties.

N. Appeals from a final decision of the Appeals Subcommittee pursuant to this Procedure must be filed with the Insurance Commissioner within thirty (30) days of the mailing date of the Committee's decision as provided in Section 654 of the Law and Section 717 of the Act.

O. Unless otherwise specifically provided by this Procedure, all periods of time shall be calculated from the postmark on materials sent by first class or certified mail through the United States Postal Service or the date of any hand delivery, whichever date is earlier.

P. Nothing contained in this Procedure shall prevent efforts to resolve any controversies governed by this Procedure on an informal basis at any stage of the proceedings before the Bureau or the Appeals Subcommittee.