



WORKING TO MAKE A DIFFERENCE

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Update 2011 – 4

**TO: HOLDERS OF THE ASSESSMENT MANUAL**

This update to the *Assessment Manual* contains amendments to the *Manual* implemented since Update 2011 – 3.

These amendments delete references to an annual classification cycle as per a decision by the Board of Directors and a Section 251 Referral from the WCAT **effective November 8, 2011:**

- Policy AP1-37-1, *The Classification System*
- Policy AP1-37-3, *Classification – Changes*
- Policy AP1-96-1, *Reconsiderations, Reviews and Appeals – Reconsideration of Decisions*

A summary of the amendments is attached and the amended pages are included as part of this package.

If you have any questions regarding subscription information for updates to the *Assessment Manual*, please contact WorkSafeBC Customer Service at the following:

Email:	customer.service@worksafebcstore.com		
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Roberta Ellis  
Senior Vice President  
Corporate Affairs

Attachments

## ***ASSESSMENT MANUAL***

### **SUMMARY OF AMENDMENTS – Update 2011 – 4**

AP1-37-1	Pages 1 to 3	Amendment to delete references to an annual classification cycle
AP1-37-3	Pages 1 to 3	Amendment to delete references to an annual classification cycle
AP1-96-1	Pages 1 to 8	Amendment to delete references to an annual classification cycle

**RE: The Classification System****ITEM: AP1-37-1**

## **BACKGROUND**

### **1. EXPLANATORY NOTES**

Every year the Board publishes the *Classification and Rate List*, which forms part of Board policy, and uses it to assign an assessment rate for the coming year. This publication lists every classification unit and the assessment rate assigned to it for the year.

### **2. THE ACT**

Section 37(1):

- (1) The following classes are established for the purpose of assessment in order to maintain the accident fund:

- |       |     |   |
|-------|-----|---|
| Class | 1:  | Primary resource  |
| Class | 2:  | Manufacturing   |
| Class | 3:  | Construction  |
| Class | 4:  | Transportation and warehousing  |
| Class | 5:  | Trade   |
| Class | 6:  | Public services   |
| Class | 7:  | General services  |
| Class | 8:  | Canadian Airlines International Ltd., Canadian Pacific Hotels Corporation, Canadian Pacific Railway Company, Cominco Ltd. |
| Class | 9:  | The Burlington Northern and Santa Fe Railway Company  |
| Class | 10: | Air Canada, Canadian National Railway Company, Via Rail Canada Inc.   |

Class 11: British Columbia Assessment Authority, British Columbia Buildings Corporation, British Columbia Ferry Corporation, British Columbia Railway Company, Emergency Health Services Commission, Government of British Columbia, Workers' Compensation Board of British Columbia.

## **POLICY**

### **1. GENERAL**

The classification system is based on the principle that the cost of producing a product or providing a service includes the cost of injuries or diseases incurred by the workers doing the work. The system is based on industrial undertaking rather than on occupation or hazard. If a specific product is being manufactured, the classification is the same, regardless of whether the manufacturing is done by the employer's workers or subcontracted out to another firm. A classification includes all occupations within the industry, including office or clerical staff.

The terms classes, subclasses and further subclasses are used in section 37 of the *Act*. For the purposes of describing the Board's industrial classification system, a sector is equivalent to a class, subsectors are equivalent to subclasses, and classification units are equivalent to further subclasses.

### **2. CLASSIFICATION UNITS**

Employers and independent operators are assigned to classification units on the basis of the industry in which the firm is operating. In assigning the classification, some of the factors considered are the type of product or service being provided, the processes and equipment that are used, and the type of industry with which the firm is in competition. Occupations of individual workers may be reviewed when assigning the classification, but only as an indicator of the type of industry being carried on. The fact that an employer contracts out parts of an industry to other employers does not mean that the employer cannot be classified in that industry. The classification system should not unfairly differentiate between firms competing for the same business.

Where a firm's operations are an inescapable part of another firm's operations, the firm's classification will be the same as that of the other firm regardless of ownership.

If the firm's operations do not fall within this category, but are ancillary, or an extension or add-on phase, to another firm's operations, the classification will be the same as the other firm's if there is a degree of common ownership. Even if the firm is separately registered, the two firms will be regarded as one firm for the

purpose of classification. The multiple classification criteria will then be applied. Where a firm's operations are divided so that part is within BC and part is outside of BC, the firm will be classified according to the business of the operations conducted within BC.

### 3. SUBSECTORS

The purpose of subsectors is to provide boundaries within which classification units are grouped with other similar classification units based on industrial undertakings.

### 4. SECTORS

Sectors are large categories of subsectors that are involved in a similar area of the economy at the broadest level.

## PRACTICE

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at [www.worksafebc.com](http://www.worksafebc.com).

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<b>EFFECTIVE DATE:</b>	November 8, 2011
<b>AUTHORITY:</b>	ss. 37(1) and 37(2), <i>Workers Compensation Act</i> .
<b>CROSS REFERENCES:</b>	See also Classifications – Multiple (AP1-37-2) and Classification – Changes (AP1-37-3) and Assessment Rates (AP1-39-1) in the <i>Assessment Manual</i> .
<b>HISTORY:</b>	<p>Policy changes to reflect the removal of the annual classification cycle were made effective November 8, 2011.</p> <p>Policy changes to reflect the adoption of an annual classification cycle were made effective October 1, 2009.</p> <p>Updated effective October 1, 2007 to reflect the Board's authority to classify firms.</p> <p>This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i>. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued. Replaces in part Policies No. 30:10:00 and 30:20:10 of the <i>Assessment Policy Manual</i> and Decision No. 58 in volumes 1 - 6 of the <i>Workers' Compensation Reporter</i>. Consequential changes were subsequently made in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i>.</p>
<b>APPLICATION:</b>	Applies to all decisions, including appellate decisions, made on or after November 8, 2011.



**RE: Classification – Changes****ITEM: AP1-37-3**

## **BACKGROUND**

### **1. EXPLANATORY NOTES**

This policy sets out the reasons for changing a firm's classification, the effective date of a change, and the impact of a change in classification on experience rating.

The Board may do one or more of the following with respect to all or part of the firm's operation:

- (a) Change an existing classification unit;
- (b) Add classification unit; or,
- (c) Delete a classification unit.

### **2. THE ACT**

See Items AP1-37-1, AP1-37-2 and AP1-42-1.

## **POLICY**

### **1. FIRM'S RESPONSIBILITY**

It is the duty of each firm to provide timely, complete and accurate information to the Board regarding changes in the firm's operations, and to act promptly on information requests and information provided by the Board.

### **2. CHANGE IN CLASSIFICATION**

Set out below are possible reasons for a change in a firm's classification, with the associated effective date and the experience rating impact. However, if there has been fraud or misrepresentation, section 2.4 of this Item will be used to determine the effective date and the experience rating impact.

Decisions in these cases do not constitute reconsiderations of existing classification decisions.

#### **2.1 Classification Changes under Section 37(2)(f)**

The purpose of the classification system is to classify firms into groups that can be used to set fair and equitable rates. The Board undertakes periodic reviews of the classification system to ensure that this purpose is met and that the classification system does not unfairly differentiate between firms competing for the same business.

Section 37(2)(f) outlines the Board's authority to withdraw from a subclass:

- (i) an employer, independent operator or industry,
- (ii) a part of the subclass, or
- (iii) another subclass or part of another subclass,

and transfer it to another class or subclass or form it into a separate class or subclass.

Where a firm's classification changes as a result of the Board's exercise of this authority, the effective date is January 1<sup>st</sup> of the year following the date on which the Board identified the firm's classification for evaluation and the general rule is that a firm's experience will transfer.

## **2.2 Change in Operation**

If the firm's operations have changed, and the firm is now misclassified, the change will be effective on the date of the change in operation, or if the date of the change cannot be determined, then January 1<sup>st</sup> of the year in which the decision to change the firm's classification occurred, whichever is later.

If there has been a distinct change in the firm's operations, a firm's experience will not transfer. If the change in operations has occurred incrementally or the firm's operations have evolved over time, a firm's experience may transfer.

## **2.3 Policy Changes Which Result in Changes to Classification Units**

The Board may make policy changes regarding classification units or the composition of classification units which may result in changes to a firm's classification.

Changes to a firm's classification which occurs as a result of a policy change will be effective January 1<sup>st</sup> of the following year, unless otherwise specified by the Board.

The Board may transfer a firm's experience in this situation.

## **2.4 Fraud or Misrepresentation**

A classification change may be necessary due to a firm's fraud or misrepresentation, as described in Item AP1-96-2. For the purposes of determining a firm's classification, misrepresentation includes failure to provide timely, complete, and accurate information to the Board regarding the firm's operations or changes to the firm's operations, and a failure to act promptly on information requests or information provided by the Board.

If the need to change the classification is the result of fraud or misrepresentation, the effective date of the change will be determined by the Board based on the reason for the fraud or misrepresentation.

If the Board changes a firm's classification because of fraud or misrepresentation, the general rule is that a firm's experience will not transfer. However, the Board may transfer experience if the firm could benefit from a failure to transfer.

## **PRACTICE**

If a classification is being added to a firm's existing classification, the criteria of the multiple classification policy must be met before the classification change policy is applied.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at [www.worksafebc.com](http://www.worksafebc.com).

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<b>EFFECTIVE DATE:</b>	November 8, 2011
<b>AUTHORITY:</b>	ss. 37(2) and (3) and 42, <i>Workers Compensation Act</i> .
<b>CROSS REFERENCES:</b>	See also The Classification System (AP1-37-1), Classification – Multiple (AP1-37-2), Transfer of Experience Between Firms (AP1-42-3), Reconsideration, Reviews and Appeals - Reconsiderations of Decisions (AP1-96-1), and Reconsideration, Reviews and Appeals – Fraud and Misrepresentation (AP1-96-2) in the <i>Assessment Manual</i> .
<b>HISTORY:</b>	<p>Policy changes to remove the annual classification cycle were made effective November 8, 2011.</p> <p>Policy changes to reflect the adoption of an annual classification cycle were made effective October 1, 2009.</p> <p>Policy changes to provide three general reasons for classification changes, with corresponding effective dates and direction on the transfer of experience rating were made effective January 1, 2004 and applied to all new decisions on or after that date.</p> <p>Consequential changes to this Item made as a result of the <i>Workers Compensation Amendment Act (No. 2), 2002</i> were effective on March 3, 2003.</p> <p>This Item resulted from an editorial consolidation of the former <i>Assessment Policy Manual</i>, which was effective on January 1, 2003. The Policy in this Item continued the substantive requirements that existed before the consolidation, with any wording changes necessary to reflect legislative and other changes that had occurred. Policy No. 30:20:40 in the former <i>Assessment Policy Manual</i> was replaced by this Item.</p>
<b>APPLICATION:</b>	Applies to all decisions, including appellate decisions, made on or after November 8, 2011.



**RE: Reconsiderations, Reviews and Appeals  
Reconsiderations of Decisions**

**ITEM: AP1-96-1**

## **BACKGROUND**

### **1. Explanatory Notes**

The *Act* provides the Board with a limited time period to reconsider previous decisions or orders. Subject to certain restrictions, the Board may only reconsider a decision or order under Part 1 of the *Act* during the period of 75 days subsequent to the decision or order being made.

### **2. The Act**

Section 1:

“reconsider” means to make a new decision in a matter previously decided where the new decision confirms, varies or cancels the previous decision or order

Section 37:

- (2) The Board may do one or more of the following:
- (a) create new classes in addition to those referred to in subsection (1);
  - (b) divide classes into subclasses and divide subclasses into further subclasses;
  - (c) consolidate or rearrange any existing classes and subclasses;
  - (d) assign an employer, independent operator or industry to one or more classes or subclasses;
  - (e) withdraw from a class
    - (i) an employer, independent operator or industry;
    - (ii) a part of the class; or
    - (iii) a subclass or a part of a subclass;

and transfer it to another class or subclass, or form it into a separate class or subclass;

- (f) withdraw from a subclass
  - (i) an employer, independent operator or industry,
  - (ii) a part of the subclass, or
  - (iii) another subclass or part of another subclass,

and transfer it to another class or subclass or form it into a separate class or subclass, and

- (3) If the Board exercises authority under subsection (2), it may make the adjustment and disposition of the funds, reserves and accounts of the classes and subclasses affected that the Board considers just and expedient.

#### Section 39(6):

The Board must notify each employer of the amount of each assessment due in respect of the employer's industry and the time when it is payable. The notice may be sent by post to the employer, and is deemed to be given to the employer on the day the notice is mailed.

#### Section 96:

- (4) Despite subsection (1), the Board may, on its own initiative, reconsider a decision or order that the Board or an officer or employee of the Board has made under this Part.
- (5) Despite subsection (4), the Board may not reconsider a decision or order if
  - (a) more than 75 days have elapsed since that decision or order was made,
  - (b) a review has been requested in respect of that decision or order under section 96.2, or
  - (c) an appeal has been filed in respect of that decision or order under section 240.

## Section 221:

- (1) A document that must be served on or sent to a person under this *Act* may be
  - (a) personally served on the person,
  - (b) sent by mail to the person's last known address, or
  - (c) transmitted electronically, by facsimile transmission or otherwise, to the address or number requested by the person.
- (2) If a document is sent by mail, the document is deemed to have been received on the 8<sup>th</sup> day after it was mailed.
- (3) If a document is transmitted electronically, the document is deemed to have been received when the person transmitting the document receives an electronic acknowledgement of the transmission.

**POLICY****(a) Definition of reconsideration**

A reconsideration occurs when the Board considers the matters addressed in a previous decision anew to determine whether the conclusions reached were valid. Where the reconsideration results in the previous decision being varied or cancelled, it constitutes a redetermination of those matters.

Decisions that are reconsidered under section 96(4), and are therefore subject to the time limitations in section 96(5), are decisions on individual matters. Examples of such decisions include:

- the modification of an employer's assessment rate through experience rating;
- determinations regarding whether an individual is a worker, employer, independent operator or labour contractor;
- the application of a penalty for failure to remit or report as required under the *Act*; and
- the charging of claims costs when an employer is in default and an injury or occupational disease occurs to one of its workers during the period of default.

Matters of general application, on the other hand, are not intended to be covered by section 96(4) and (5). Examples of such matters include:

- the allocation of income, compensation payments, outlays, expenses, assets, liabilities, surpluses or deficits to or from an account of a class or subclass, or to or from a reserve of the accident fund, with the exception of section 10(8) and section 39(1)(b), (d) and (e) decisions as they relate to a specific employer or independent operator; and
- the determination of an assessment rate for a class or subclass.

Section 37 of the *Act* establishes the Board's authority to make any changes to classes and subclasses that are considered necessary and appropriate as part of the management of the classification system. Changes in classification resulting from the exercise of this authority, or resulting from a firm's fraud or misrepresentation, do not constitute a reconsideration of a Board decision. Rather, the change constitutes a new decision pursuant to the exercise of the Board's normal classification authority under section 37(2). The restrictions, including the 75-day time limit, placed upon the Board's reconsideration authority under section 96(5) do not apply.

On a review or an appeal, the Review Division and the WCAT may make a decision that confirms, varies or cancels the decision under review or appeal. The Review Division and WCAT decisions are final and must be complied with by the Board.

Varying or canceling a decision may make invalid other decisions that are dependent upon or result from the decision under review or appeal. The reconsideration requirements under sections 96(4) and 96(5) do not limit changes to previous decisions that are required in order to fully implement decisions of the Review Division or the WCAT.

### **(b) The purpose of sections 96(4) and (5)**

The Board's authority to reconsider previous decisions and orders is found in section 96(4) and (5) of the *Act*. The purpose of these amendments is to promote finality and certainty within the workers' compensation system.

Sections 96.2 to 96.5 establish a right to request a review by a review officer, where a party disagrees with a decision or order made at the initial decision-making level. It is this review, rather than the application of the Board's reconsideration authority, which is intended to be the dispute resolution mechanism for initial decisions and orders of Board officers.

The use of the words “on its own initiative” in section 96(4), and the availability of a review mechanism under sections 96.2 to 96.5, indicate that the Board is not intended to set up a formal application for reconsideration process to resolve disputes that parties may have with decisions or orders.

Rather, the Board’s reconsideration authority is intended to provide a quality assurance mechanism by the Board. The Board is given a time-limited opportunity to vary or cancel, on its own initiative, any incorrect decisions it may have made.

However, this does not preclude the Board from basing a reconsideration on information that may be brought forward by a worker, employer or other party to a decision or order, provided the grounds for reconsideration have been met.

### **(c) Advice to parties**

Parties to a decision or order will be advised at the time the decision or order is made of the right to request a review of the decision or order under section 96.2. The Board will take all reasonable steps to communicate a decision or order to a party. A party who requests the reconsideration of the decision or order will be reminded by the Board of the party’s right to request a review under section 96.2.

If the Board reconsiders a decision or order before the request for review is made, the Board will provide the parties to the decision or order with a reconsidered decision. The reconsidered decision gives rise to a new right to request a review under section 96.2.

### **(d) Restrictions on reconsideration**

The *Act* places a number of express restrictions on reconsidering previous decisions and orders. It is noted, in this respect, that “reconsider” means the making of a new decision and not merely the starting of the reconsideration process leading to the new decision.

- The Board may not reconsider a decision or order more than 75 days after the decision or order was made. In accordance with section 221, where a decision or order has been sent by either registered or regular mail, the document is deemed to have been received on the 8<sup>th</sup> day after it was mailed. If the decision is sent electronically, the document is deemed to have been received on the date the Board receives electronic acknowledgement of receipt. One exception to section 221 applies to decisions mailed to employers in accordance with section 39(6) regarding the amount of assessment due in respect of the employer’s industry and the time when it is payable. This notice is deemed to be given to the employer on the day the notice is mailed.

- The Board may not reconsider a decision or order if a review has been requested by an employer or an independent operator in respect of that decision or order under section 96.2. A request for review under section 96.2 immediately terminates the authority of the Board to reconsider a previous decision or order, even if 75 days has not passed since the decision or order was made.
- The Board may not reconsider a decision or order if an appeal has been filed in respect of that decision or order to the Workers' Compensation Appeal Tribunal under section 240. The filing of an appeal under section 240 immediately terminates the authority of the Board to reconsider the decision or order, even if 75 days has not passed since the decision or order was made.

There are, in addition, a number of implicit restrictions on reconsidering previous decisions and orders. The Board is not authorized to reconsider appellate decisions or findings of the following bodies:

- the former Appeal Division;
- the former Commissioners, who existed prior to June 3, 1991;
- the boards of review and the Workers' Compensation Review Board; and
- the Board of Review, which existed prior to January 1, 1974.

Section 256 of the *Act* provides for the Workers' Compensation Appeal Tribunal to reconsider its own decisions and decisions of the former Appeal Division under certain limited conditions.

#### **(e) Grounds for reconsideration**

Subject to the limitations set out above, the Board may reconsider a decision on its own initiative where:

- there is new evidence indicating that a prior decision or order was made in error;
- there has been a mistake of evidence, such as:
  - material evidence was initially overlooked, or

- facts were mistakenly taken as established which were not supported by any evidence or by any reasonable inference from the evidence;
- there has been a policy error such as:
  - applying an applicable policy incorrectly, or
  - not applying an applicable policy;
- there has been a clear error of law, such as a failure by the Board to follow the express terms of the *Act*; or
- one or more of the reasons for reducing or cancelling a penalty under the policy in Item AP1-47-1 are met.

**(f) Authority of Board officers, Managers and Directors to reconsider**

A Board officer may only reconsider a decision made by another Board officer where there is new evidence, a mistake of evidence, a policy error or a clear error of law or where one or more of the reasons for reducing or cancelling a penalty are met.

A Manager or Director may reconsider a decision or order made by a Board officer in any of these circumstances, and may also reweigh the evidence and substitute his or her own judgment for that of the Board officer.

**(g) Correction of administrative errors**

The correction of an administrative error such as a clerical, typographical or mathematical error or a slip or omission does not result in a reconsideration of a previous decision. The ability to correct these types of errors, slips or omissions would not be considered a reconsideration of the original decision, as it would not change the intent of the original decision made by the Board officer.

This process for correcting errors, slips or omissions, however, cannot be applied to change previous decisions.

## **PRACTICE**

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WorkSafeBC website.

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<b>EFFECTIVE DATE:</b>	November 8, 2011
<b>AUTHORITY:</b>	ss. 1, 37(2), 39(6), 96(2) and 221 of the <i>Workers Compensation Act</i> .
<b>CROSS REFERENCES:</b>	See also Penalties (AP1-47-1); Fraud and Misrepresentation (AP1-96-2) in the <i>Assessment Manual</i> .

**HISTORY:**

Policy changes to reflect the removal of the annual classification cycle were made effective November 8, 2011.

Changes to policy to clarify that the correction of administrative errors and the implementation of Review Division and Workers' Compensation Appeal Tribunal decisions do not constitute a reconsideration effective January 1, 2005 and applied to all decisions on or after that date.

Consequential changes made in accordance with the *Workers Compensation Amendment Act (No. 2), 2002* and applied to all reconsiderations on or after March 3, 2003.

Replaces Policy No. 10:40:00 of the *Assessment Policy Manual*. This Item results from the 2002 "editorial" consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

**APPLICATION:**

Applies to all decisions, including appellate decisions, made on or after November 8, 2011.