

2009/07/14-08

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA
RESOLUTION OF THE BOARD OF DIRECTORS

RE: An Annual Classification Cycle

WHEREAS:

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("Act"), the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

The Board of Directors establishes the classification system and its associated rates yearly by approving a new *Classification and Rate List* each year;

AND WHEREAS:

The adoption of an annual cycle of classifying and rating firms based on each year's established *Classification and Rate List* would reflect the annualized nature of the assessment process;

AND WHEREAS:

The Policy and Research Division has consulted with stakeholders on whether an annual classification cycle should be adopted;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. The POLICY statements in *Assessment Manual* Items AP1-37-1 and AP1-37-3 are amended as set out in Appendix A of this Resolution.
2. This resolution is effective October 1, 2009 and applies to all decisions made on or after October 1, 2009.

3. This resolution constitutes a policy decision of the Board of Directors.

DATED at Richmond, British Columbia, July 14, 2009.

By the Workers' Compensation Board

**DR. ROSLYN KUNIN, CM, ICD.D
CHAIR, BOARD OF DIRECTORS**

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RE: The Classification System

ITEM: AP1-37-1

BACKGROUND

1. ~~Explanatory Notes~~ EXPLANATORY NOTES

Every year the Board publishes the *Classification and Rate List*, which forms part of Board policy, **and uses it to classify firms and 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~~ 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

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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

~~(a)~~ **General¹. 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.

~~(b)~~ **Classification units². CLASSIFICATION UNITS**

~~The Board classifies all employers and independent operators into classification units.~~

Employers and independent operators are assigned to classification units **annually and at other times as the Board requires**, 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

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employers does not mean that the employer cannot be classified in that industry. The classification system should not unfairly discriminate 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.

~~(c)~~ **Subsectors**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.

~~(d)~~ **Sectors**⁴. **SECTORS**

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

PRACTICE

~~For more information on the classification system, readers should consult the WCB website at~~

~~<http://www.worksafebc.com/insurance/premiums/classification/default.asp>.~~

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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EFFECTIVE DATE:	October 1, 2007 October 1, 2009
AUTHORITY:	ss. 37(1) and 37(2), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	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> .
HISTORY:	Policy changes to reflect the adoption of an annual classification cycle were made effective October 1, 2009. Updated effective October 1, 2007 to reflect the Board's authority to classify firms. 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> .
APPLICATION:	Applies on or after October 1, 2007 Applies to all decisions made on or after October 1, 2009.

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RE: **Classification – Changes**

ITEM: **AP1-37-3**

BACKGROUND

1. ~~Explanatory Notes~~ **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~~ **THE ACT**

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

POLICY

1. ~~Firm's Responsibility~~ **FIRM'S RESPONSIBILITY**

It is the responsibility 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~~ **CHANGE IN CLASSIFICATION**

The Board may change a firm's classification. ~~The reasons for a change in classification fall into four main categories:~~

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- ~~(a) The firm's operations have changed and the firm is now misclassified;~~
- ~~(b) The firm's operations have not changed, but it is misclassified;~~
- ~~(c) Policy changes which result in changes to classification units; or,~~
- ~~(d) The firm was misclassified based on the firm's non-compliance with reporting requirements, which includes, but is not limited to fraud, or misrepresentation, failure or delay in providing timely, complete and accurate information to the Board, or failure to act on information.~~

The effective date of a change in a firm's classification **and the impact on the firm's experience rating** depends on the reason for the change. **Set out below are four reasons why the Board may make a new decision concerning a firm's classification, and the effective date and impact on experience rating associated with each reason for change. Decisions in these cases do not constitute reconsiderations of existing classification decisions.**

2.1 The Annual Classification Cycle

A firm is assigned one or more classifications every year as a consequence of the yearly establishment of the *Classification and Rate List*. This assignment may result in a firm's classification changing. The effective date of a change to a firm's classification resulting from the annual classification cycle is January 1st of the year for which the *Classification and Rate List* is established.

Where a firm's classification changes as a result of the annual classification cycle, the general rule is that a firm's experience will transfer.

~~3. Effective Date of Change in Classification~~

- ~~(a) *Change in Operation*~~

2.2 Change in Operation

~~Unless there has been firm non-compliance, if the firm's operations have changed, and the firm is now misclassified, the change will be effective on the~~

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date of the change in operation, or January 1st of the year in which the decision to change the firm's classification occurred, whichever is later, **unless there has been fraud or misrepresentation.**

If the date of the change in operation cannot be determined, the effective date will be January 1st of the year in which the decision to change the classification occurred.

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.

~~(b) — No Change in Operation~~

~~i. — No Board Error~~

~~Unless the firm was misclassified because of firm non-compliance or Board error, if the operations have not changed, but the firm is misclassified, the effective date of a change in classification will depend on whether the change will lead to an increase or decrease in the base rate.~~

- ~~• If the change will lead to a decrease in the base rate it will be effective January 1st of the year in which the decision to change the firm's classification occurs.~~
- ~~• If the change will lead to an increase in the base rate it will be effective January 1st of the year following the date of the decision to change the firm's classification.~~

~~ii. — Board Error~~

~~A Board error occurs if the firm has provided timely, complete and accurate information to the Board, but a clear error is made by the Board in classifying the firm. It includes a misclassification that continues after a Board officer has audited a firm and a classification review has taken place. It does not include borderline classification questions requiring a judgment decision or situations where the information supplied by the firm is not timely, complete and accurate, regardless of whether this was deliberate or inadvertent.~~

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~~If the need to change the firm's classification is the result of a Board error, the effective date of the change will depend on whether the change will lead to an increase or decrease in the base rate.~~

- ~~• If the change will lead to a decrease in the base rate, the change may be effective on the date that the firm was misclassified because of the Board error, but in no circumstances will the effective date be earlier than January 1st of the year three (3) years before the date the error came to the Board's attention.~~
- ~~• If the change will lead to an increase in the base rate, the change will be effective on January 1st of the year following the date the error came to the Board's attention.~~

~~(c) Policy Changes Which Result in Changes to Classification Units~~

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 an employer's classification.

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

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

~~(d) Firm Non-Compliance~~

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 may include 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.**

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~~non-compliance. Firm non-compliance includes, but is not limited to:~~

- ~~• fraud;~~
- ~~• misrepresentation;~~
- ~~• failure to provide timely, complete or accurate information to the Board;~~
- ~~• failure to act promptly on information requests; or,~~
- ~~• failure to act on information provided by the Board.~~

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

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.

4. ~~Impact on Experience Rating~~

~~A change in classification may result in a transfer of experience rating. The following principles apply:~~

- ~~(a) The classification has changed because of a change in the firm's operations.~~
 - ~~i. If there has been a distinct change in the operations, the experience rating will not transfer.~~
 - ~~ii. If the change in operations has occurred incrementally or the firm's operations have evolved over time, the experience rating may transfer.~~
- ~~(b) If the classification has changed, but not as a result of a change in the firm's operations, the experience rating may transfer. This includes a change in classification because of Board error.~~

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- ~~(c) — If the classification has changed because of firm non-compliance, the general rule is that experience rating will not transfer. However, the Board may decide to transfer experience rating if the non-compliant firm could benefit from a failure to transfer.~~

~~The firm will be advised of any change in its classification.~~

~~A decision to change a firm's classification due to a change in the firm's operations, policy changes which result in changes to classification units, or firm non-compliance, does not constitute a reconsideration of a decision under section 96(4) of the Act. 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.~~

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.

EFFECTIVE DATE:	November 1, 2007 October 1, 2009
AUTHORITY:	ss. 37(2) and (3) and 42, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also The Classification System (AP1-37-1), Classification – Multiple (AP1-37-2), Transfer of Experience Rating (AP1-42-1), 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> .
HISTORY:	Policy changes to reflect the adoption of an annual classification cycle were made effective October 1, 2009. 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.

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Consequential changes to this Item made as a result of the *Workers Compensation Amendment Act (No. 2), 2002* were effective on March 3, 2003.

This Item resulted from an editorial consolidation of the former *Assessment Policy Manual*, 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 *Assessment Policy Manual* was replaced by this Item.

APPLICATION:

~~Applies to all decisions on or after November 1, 2007.~~ **Applies to all decisions made on or after October 1, 2009.**