

# DISCUSSION PAPER

## 1. TITLE

Annual Classification Cycle

## 2. ISSUE

As a result of the 2003 legislative changes and a 2007 policy change to limit reconsideration of classification decisions, situations now arise where the Assessment Department of WorkSafeBC ("WCB") cannot change the classification of a firm, because the original decision was made more than 75 days in the past.

To illustrate the issue, the Assessment Department advises that it made a classification error on registering a firm where the necessary facts to properly determine the firm's classification were on file. In 2008, the misclassification was discovered, which results in the firm paying about \$60,000 per year less than competing firms of similar size. The other firms in the rate group of the misclassified firm end up subsidizing a portion of the misclassified firm's costs, and these firms cannot appeal the decision.

Misclassifications may result in rate inequities between competing firms. In addition, some firms may inappropriately pay for other firms' costs ("cross-subsidization"), compromising the accuracy of the WCB's claim cost and payroll data. The WCB relies on this data to set rates, calculate experience rating, and monitor industry-level occupational health and safety performance.

At issue is whether firm classifications should be assigned annually, allowing the WCB to correct past misclassifications for future assessment years.

## 3. BACKGROUND

### 3.1 Law and Policy Concerning the Classification System

The *Workers Compensation Act* ("Act") provides that the WCB must set up and maintain the accident fund, which covers prevention activities, expenses, and the current and future costs of all claims.<sup>1</sup> The accident fund has two sources of revenue: investment returns and assessments collected from firms registered with the WCB.<sup>2</sup>

The Act sets out 11 classes, established for the purpose of assessment to maintain the accident fund.<sup>3</sup> The WCB also has the discretion to make changes to the classification system, which includes the power to:

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<sup>1</sup> Section 36 of the Act.

<sup>2</sup> In 2008, assessments collected from registered firms totaled over \$1.1 billion.

<sup>3</sup> Section 37 of the Act.

- create new classes;
- divide classes into subclasses, and subclasses into further subclasses;
- assign employers, independent operators, or industries to one or more classes or subclasses; and
- reassign them to new classes or subclasses if necessary.

By policy, the WCB has expanded the classification system into about 600 classification units (“CU”). Every year the Board of Directors (“BOD”) establishes a new *Classification and Rate List*, which forms part of policy. The *Classification and Rate List* is composed of the CUs into which employers are grouped, along with their associated rates and numeric codes.

Several sections of the *Act* address the assessment of employers as being an annual process.<sup>4</sup> These sections describe the assessment of employers in terms of yearly requirements, calculations, and determinations. However, at present the policies on classification in the *Assessment Manual* are silent concerning the length of time a classification assignment will last.

### 3.2 Law and Policy Concerning Classification Changes

Historically, the *Act* provided that a decision could be reopened, reheard, and redetermined at any time. As a result, policy contemplated classification decisions being made at any point while a firm was registered with the WCB. There were no limitations on when the WCB could make a decision to change a firm's classification.

In 2003, the *Act* was changed to provide that most decisions made by the WCB are subject to a 75-day time limit on reconsideration. After 75 days, the WCB cannot reconsider a decision it has made, unless there is fraud or misrepresentation.<sup>5</sup>

When this change occurred, *Assessment Manual* policy was updated to provide that a decision to change an employer's classification was not a reconsideration. Therefore, the 75-day time limit imposed on reconsidering decisions under the *Act* did not apply to classification changes. The rationale for this approach was that the language in the *Act* concerning the WCB's authority to classify a firm took precedence over the limitation on reconsiderations.

The result of this policy approach was that the Assessment Department continued to decide classification issues at any time, regardless of when the last classification decision was made.

In an April 2007 memorandum, a Workers' Compensation Appeal Tribunal (“WCAT”) Vice Chair referred the classification change policy to the WCAT's Chair as a patently unreasonable interpretation of the *Act*. The Vice Chair had determined that decisions to

<sup>4</sup> See, for example, sections 38(1), 39(1), 39(7), 39(9), and 49(1) of the *Act*.

<sup>5</sup> Section 96(5) of the *Act*.

change an employer's classification due to Board error are reconsiderations, and thus are subject to the 75-day time limit.

In response to the referral, the BOD reviewed the classification change policy and adopted the Vice-Chair's analysis. As a result, the BOD changed the policy in October 2007, so that the 75-day time limit on reconsideration applies to classification decisions, where there is no change in operations and no fraud or misrepresentation.

## **4. DISCUSSION**

### **4.1 The Challenges Presented by Current Policy**

The implications of having the 75-day time limit on reconsiderations apply to classification decisions have been as follows:

- The Assessment Department estimates that the 75-day time limit precludes it from reviewing a firm's classification in about 3,000 cases per year.<sup>6</sup> This frequently results in situations that are difficult to explain to firms requesting classification reviews.
- As the 75-day time limit precludes putting some misclassified firms into the correct classification, misclassified firms will remain misclassified until their operations change or the WCB's classification policy changes in a way that affects the classification of the firm.
- Some misclassified firms end up paying assessments at a higher rate than their competitors, while some firms pay at a lower rate than their competitors.
- Misclassified firms' claim and payroll data is reported in the wrong CU. As a result, cross-subsidization occurs, which is when a firm pays lower rates than it should, and other firms in the classification pay that firm's higher costs.<sup>7</sup> The WCB also relies on this now-inaccurate data to set rates, calculate experience rating, and monitor industry-level occupational health and safety performance.
- Firms that are charged a higher assessment rate due to a Board error in classification, and who identify the error after the 75-day time limit, can request an extension of time to review the decision from the Review Division. Since the policy changed in 2007, the number of requests for an extension of time made concerning reviews on classification issues rose from three in 2007 to nine in 2008. Firms that request for an extension of time from the

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<sup>6</sup> The Assessment Department estimates that these statute-barred classification reviews represent about 90 percent of its classification review requests. This means that each year about 1.5 percent of the approximately 200,000 registered firms require a classification review that the Assessment Department cannot perform. These situations do not arise only from situations where the WCB makes an error; many occur because a firm has not supplied a critical piece of information at the outset of the registration process.

<sup>7</sup> It is reasonable to assume that a firm misclassified into a lower-rated CU would have higher costs, on average, than the other firms it is classified with in its incorrect CU.

Review Division are often referred back to the Assessment Department for a classification review. This delay in receiving a decision can be frustrating for the firms.

- Firms that are charged assessment rates lower than their competitors are at a competitive advantage and would most likely not appeal the classification decision. In addition, such firms' competitors cannot appeal the decision.

In terms of the financial implications of this situation, the Assessment Department has advised that the following is a conservative estimate of the impact:

- Assuming that half of the estimated 3,000 firms that cannot have a classification review yearly are classified in CUs with lower rates than that of the CU the firms should be in, these firms will pay less than they would if they were correctly classified.
- Assuming that each of these uncorrected misclassified firms pays a total of \$2,000 per year in lower premiums, on average, there is a total of about \$3 million of cross-subsidization in the assessment system in the first year alone. (This is a low estimate, given that a single firm can pay over \$60,000 per year in lower premiums because of a misclassification.)
- As the effect of the systemic misclassifications is cumulative, it is reasonable to expect that the total amount of cross-subsidization in the system will grow into tens of millions of dollars within five years.

For firms paying more than they should, the Assessment Department in certain cases has incorrectly reconsidered the firm's classification outside the 75-day time limit, to correct the misclassification. However, where the firm asks for a review or appeal on an associated issue, the appellate bodies have overturned the Assessment Department's decision, as it did not have jurisdiction to reconsider the firm's classification.<sup>8</sup> In one such case, the firm will pay about \$10,000 more per year than it would if it was correctly classified.

To further illustrate the financial implications of this situation, the Assessment Department has provided examples of the financial effects of the misclassification of six individual firms, which are set out in Appendix A.

## **4.2 An Annual Classification Cycle**

The challenge the Assessment Department faces is that in many cases it cannot change a firm's classification when it finds that a firm is misclassified. If misclassifications could be corrected, it would prevent more firms from gaining unfair competitive advantages, and reduce the systemic effects of cumulative cross-subsidization over time.

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<sup>8</sup> For example, see WCAT decision 2009-00498.

Currently, classification decisions are treated as having no end date. This is why the 75-day time limit on reconsiderations causes misclassifications to persist indefinitely.

However, time limited classification decisions could be considered as a possible approach to address this issue. Every year, the BOD establishes a new *Classification and Rate List*. Many sections of the *Act* support the idea that the assessment process is an annual one. Given that classification is an integral part of the assessment process, it is possible that a classification decision should only last for a year, within the classification system established by the BOD for that year.<sup>9</sup>

This interpretation of the *Act's* framework for the classification system would allow the Assessment Department to correct past misclassifications.

The *Assessment Manual* policy most affected by the adoption of an annual classification cycle would be the one guiding classification changes.<sup>10</sup> The policy sets out different reasons for classification changes. Depending on the reason for the change, policy provides guidance on the effective date of the classification change.

Within the context of an annual classification cycle, it may be appropriate to revise the policy to address situations where the WCB may make a new decision concerning a firm's classification. These situations would be where:

- A firm changes its operations;
- The WCB makes policy changes which result in changes to CUs;
- A firm commits fraud or misrepresentation in describing its operations for classification purposes; and
- The annual classification cycle.

The effective date rules for the first three categories, which are already in policy, could remain unchanged. This would allow the Assessment Department to make required classification changes for future years.

The policy would also be clarified to change the current category of "non-compliance" to "fraud and misrepresentation" as a reason for a classification change, for consistency with the *Act*.<sup>11</sup> In addition, the description of fraud and misrepresentation would also be clarified to identify what may constitute misrepresentation.

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<sup>9</sup> In WCAT decision 2008-02064, the Vice Chair commented that it is within the WCB's authority "to address as a new issue the question as to the proper classification of an employer within the context of any new *Classification and Rate List* provided in a subsequent year." The Vice Chair found that because the *Act* sets out a system of annual assessments, and the *Classification and Rate List* is established as policy annually, a classification decision only has legal effect for a particular assessment year.

<sup>10</sup> *Assessment Manual* Item AP1-37-3 *Classification – Changes*.

<sup>11</sup> In WCAT decision 2008-02064, the Vice Chair found that the classification change policy makes an inappropriate distinction between Board error and non-compliance, in having the 75-day time limit apply to one category and not the other. The alterations to the classification change policy suggested

If an annual classification cycle were adopted, the general classification policy would require minor changes to reference the yearly nature of the decision. These changes would be minor in nature.<sup>12</sup>

### 4.3 Implementing an Annual Classification Cycle

In October of each year, after the BOD approves the *Classification and Rate List*, the Assessment Department currently sends every registered firm a letter advising the firm of its CU and calculated rate for the coming year. If the annual cycle were adopted, this letter could be updated to state that the Assessment Department has assigned the firm a classification within the newly approved structure. Policy provides that firms must provide "timely, complete, and accurate information" concerning changes in their operations, so it would be reasonable for the Assessment Department to assign a classification to each firm yearly based on information that is already on file.<sup>13</sup>

Assigning a CU yearly would likely result in more firms questioning their classifications in the future. As there are about 200,000 registered firms, adopting an annual classification cycle may result in an increase in the Assessment Department's workload, potentially impacting its ability to maintain customer service levels. It may also result in an increase in reviews and appeals concerning firm classifications.

## 5. OTHER JURISDICTIONS

Though all the other jurisdictions in Canada establish new assessment rates yearly, no other jurisdiction has a time limit on when it may reconsider a firm's classification. As a result, their policies are not relevant to the issues under review here.

## 6. OPTIONS AND IMPLICATIONS

### Option 1: Status quo

Under this option, no change to policy or practice would be made. Where a misclassification is not due to a change in operations or policy, or non-compliance, the WCB would continue to be unable to reconsider the firm's classification after 75 days.

#### *Implications*

- The Assessment Department estimates it would continue to be precluded from reviewing a firm's CU assignment in about 3,000 new cases per year. This frequently results in situations that are difficult to explain to firms requesting classification reviews.

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would eliminate this challenge, and ensure that the policy is consistent with the reconsideration provisions of the *Act*.

<sup>12</sup> Item AP1-37-1 *The Classification System*.

<sup>13</sup> See Item AP1-37-3 *Classification – Changes*.

- Some misclassified firms would continue to pay assessments at a higher rate than their competitors, while some firms would continue to pay at a lower rate.
- The Assessment Department estimates the financial impact as being about \$3 million in cross-subsidization cumulatively per year.
- As misclassified firms' claim and payroll data is reported in the wrong CU, assessment rates payable by firms throughout the system would continue to be affected over time. The WCB also relies on this now-inaccurate data to calculate experience rating and monitor industry-level occupational health and safety performance.
- Firms that are charged a higher assessment rate than their competitors due to a Board error in classification, and who identify the error after the 75-day time limit, would continue to request an extension of time to review the decision from the Review Division.
- Firms that are charged assessment rates lower than their competitors are at a competitive advantage and would most likely not appeal the classification decision. In addition, such firms' competitors cannot appeal the decision.

## **Option 2: Adopt an Annual Classification Cycle**

Under this option, the WCB would assign every firm a classification within the newly approved *Classification and Rate List* on an annual basis. Policy would be updated to reflect this approach, and to clarify the reasons for classification changes.

Draft policy reflecting this option is attached as Appendix B.

### *Implications*

- There may be an increase in reconsideration, review, and appeal requests as a result of a new classification decision being made for each firm every year. This would increase the Assessment Department and Review Division's workload, and potentially impact the Assessment Department's ability to maintain customer service levels.
- The Assessment Department would be able to correct misclassifications in future years, preventing ongoing cross-subsidization and promoting the financial integrity of the assessment system. Past year misclassifications could not be corrected, except where fraud or misrepresentation occurs.
- In situations where a misclassification provides a firm with a competitive advantage, the advantage would only last until the next rate year after the WCB discovers the misclassification and decides on the proper CU for the firm.
- Payroll and claims allocated to incorrect CUs because of misclassifications would be corrected in future years, promoting equitable rates for employers. This would also promote the viability of the experience rating system and protect the data the WCB collects on industry-level occupational health and safety performance.

## 7. CONSULTATION

Stakeholders are invited to provide feedback on the discussion paper, options, draft policy, and any additional comments that may be relevant to the issue.

Stakeholder comments will be accepted until **June 5, 2009**. When responding, please provide your name, organization, and address. Comments may be sent by e-mail, mail or fax to:

By e-mail: [policy@worksafebc.com](mailto:policy@worksafebc.com)

By mail: Cameron Angus  
Senior Policy Analyst  
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WorkSafeBC's governing body, the Board of Directors, will consider the options expressed by stakeholders before it adopts any amendments to the current policies.

Please note that all comments become part of the Policy and Research Division's database and may be published, including the identity of organizations and those participating on behalf of organizations. The identity of those who have participated on their own behalf will be kept confidential according to the provisions of the *Freedom of Information and Protection of Privacy Act*.

## APPENDIX A

### EXAMPLES OF MISCLASSIFIED FIRMS AND THEIR ESTIMATED FINANCIAL IMPACT ON THE ASSESSMENT SYSTEM

The following table summarizes the estimated amount of cross-subsidization caused by the misclassification of six different firms.

Firm	CU Firm is assigned to (and 2009 Base Rate)	Appropriate CU for firm (and 2009 Base Rate)	Yearly Impact of Not Changing CU <sup>14</sup>
A	Art, Craft, or Ornament Manufacture (\$0.31)	Glass Shop, Window Installation, or Window Glass Repair or Replacement (\$3.14)	\$124,000
B	General Retail (not elsewhere specified) (\$0.75)	Home Improvement Centre (\$2.02)	\$17,000
C	General Retail (not elsewhere specified) (\$0.75)	Home Improvement Centre (\$2.02)	\$10,000
D	Organizing or Conducting Special Events (not elsewhere specified) (\$0.56)	House or Other Wood Frame General Contracting, Construction or Renovation Work (\$4.03)	\$2,700
E	Forest Management Services (\$2.36)	Integrated Forest Management (\$8.51)	\$60,000
F	Metal Product Manufacture (not elsewhere specified) (\$1.60)	Structural Metal Product Fabrication (\$3.78)	\$27,000
<b>Approximate Total Yearly Impact:</b>			<b>\$240,700</b>

<sup>14</sup> These estimates are based on payroll reported for 2008 and 2008 net (Experience Rating-adjusted) rates where possible.

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## ASSESSMENT MANUAL

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 Canada Inc.

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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)~~ **General**<sup>1.</sup> **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 units**<sup>2.</sup> **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 required**, 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 discriminate between firms competing for the same business.

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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**<sup>3</sup>. **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**<sup>4</sup>. **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>

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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>	<del>October 1, 2007</del>
<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>	<b>Policy changes to reflect the adoption of an annual classification cycle were made effective [date].</b> Updated effective October 1, 2007 to reflect the Board's authority to classify firms.

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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. Replaces in part Policies No. 30:10:00 and 30:20:10 of the *Assessment Policy Manual* and Decision No. 58 in volumes 1 - 6 of the *Workers’ Compensation Reporter*. Consequential changes were subsequently made in accordance with the *Workers Compensation Amendment Act (No. 2), 2002*.

**APPLICATION:**

~~Applies on or after October 1, 2007~~

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## ASSESSMENT MANUAL

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:~~

- ~~(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;~~

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- ~~(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 consequence of the yearly establishment of the *Classification and Rate List*. The effective date of a change to a firm's classification resulting from the annual classification cycle is January 1<sup>st</sup> 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 date of the change in operation, or January 1<sup>st</sup> 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 1<sup>st</sup> of the year in which the decision to change the classification occurred.

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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 1<sup>st</sup> 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 1<sup>st</sup> 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.~~

~~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~~

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~~earlier than January 1<sup>st</sup> 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 1<sup>st</sup> 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 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.**

~~(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.**

~~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,~~

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- ~~• 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.**

### **3. 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.~~
- ~~(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~~

## APPENDIX B

### DRAFT ASSESSMENT MANUAL CHANGES

Additions in Bold. Deletions Struckthrough.



WORKING TO MAKE A DIFFERENCE

## ASSESSMENT MANUAL

~~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](http://www.worksafebc.com).

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<b>EFFECTIVE DATE:</b>	November 1, 2007
<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 Rating (AP1-42-1), <b>Reconsideration, Reviews and Appeals - Reconsiderations of Decisions (AP1-96-1), and Reconsideration, Reviews and Appeals – Fraud and Misrepresentation (AP1-96-2)</b> in the <i>Assessment Manual</i> .
<b>HISTORY:</b>	<b>Policy changes to reflect the adoption of an annual classification cycle were made effective [date].</b> 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. 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. 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.
<b>APPLICATION:</b>	<del>Applies to all decisions on or after November 1, 2007.</del>