



February 1, 2018

**MASSACHUSETTS WORKERS' COMPENSATION
ASSIGNED RISK POOL**

NOTICE TO POOL CARRIERS NO. 18-1

**CLARIFICATION ON THE USE OF THE WAIVER OF OUR RIGHT TO RECOVER
FROM OTHERS ENDORSEMENT (WC 00 03 13) ON POLICIES ISSUED THROUGH THE
MASSACHUSETTS WORKERS' COMPENSATION ASSIGNED RISK POOL**

The Waiver Of Our Right To Recover From Others (Waiver) endorsement (WC 00 03 13) is available for use on a Massachusetts workers' compensation assigned risk pool (Pool) policy when the written contract, under which the insured employer's work is being performed, requires that it waive its right of subrogation against certain parties. The purpose of this notice is to provide clarification to Pool carriers, producers, and insureds regarding two areas of confusion which are generating a growing number of questions when determining if the insured has met the Pool's contractual requirements that enable the carrier to apply the Waiver endorsement.

The first area of confusion stems from the Pool carrier's ability to add the Waiver endorsement to their insured's policy when it is required as part of the bidding requirements for a specific project. In these situations, the insured is not allowed to bid on a project unless the insured can demonstrate that the Waiver endorsement that will be required if the insured is awarded the contract is already attached to its current workers' compensation policy. Under these circumstances, if the insured can provide evidence to the Pool carrier that the Waiver endorsement is a requirement of the bid process, then the Pool carrier can add the Waiver endorsement to the policy so the insured can bid on the project.

The second area of confusion relates to the need for a separate Waiver endorsement for each job location for which the insured performs work under a contract for the same person or organization. If a Waiver endorsement is added to a policy naming a person or organization within the schedule of that endorsement, then any work performed by the insured under a written contract with the party named on the endorsement, regardless of whether it is carried out at different locations, would be subject to the Waiver endorsement. This does not constitute a "blanket waiver" which would waive the carrier's right to recover from all persons or organizations for which its insured may perform work during the policy period; such blanket waivers are not permissible in the Pool.

If you have any questions you may contact me at 617-646-7594 or dcrowley@wcribma.org.

DANIEL M. CROWLEY, CPCU
Vice President – Customer Services & Residual Market