



August 16, 2021

Office of Chief Clerk
MC GC-CCO
Texas Department of Insurance
P.O. Box 12030
Austin, TX 78711-2030

Re: Comments on the National Council on Compensation Insurance's *Item B-1444—NCCI's Basic Manual for Workers Compensation and Employers Liability Insurance for Texas*

Dear Chief Clerk:

Texas Mutual Insurance Company (Texas Mutual) appreciates the opportunity to offer comments on the National Council on Compensation Insurance's (NCCI) *Item B-1444—NCCI's Basic Manual for Workers Compensation and Employers Liability Insurance for Texas (Basic Manual)*.

Texas Mutual supports modernization of the *Basic Manual* and the proposed revisions. However, in keeping with NCCI's statement that the filing is not intended to make substantive changes to any rule or classification, Texas Mutual offers the following comment and recommendation regarding proposed Rule BM-WORW-C215B. Texas Mutual also offers the suggestion noted below.

SPECIFIC COMMENTS AND RECOMMENDATIONS

1. Current Rule 1-C-2-a (Words and Phrases) and Proposed Rule BM-WORW-C215B.

Comment:

Under current Rule 1-C-2-a (Words and Phrases), classifications that reference "All Employees", "All Other Employees", "All Operations", or "All Operations to Completion" allow for operations within a business to be separately classified as follows:

- Construction or Erection Permanent Yard (Code 8227)
- Contractor—Project Manager, Construction Executive, Construction Manager, or Construction Superintendent (Code 5606)
- Classifications describing an operation that is a standard exception unless the basic classification includes the standard exception operation
- Classifications describing an operation that is a general exclusion
- Any separate and distinct business

Under proposed Rule BM-WORW-C215, classification code 8227 applicable to Construction or Erection Permanent Yard and code 5606 applicable to Project Manager, Construction Executive, Construction Manager, or Construction Superintendent would not be available for employers assigned to the following classifications:

- 5200 Swimming Pool Construction—All Operations & Drivers, et al
- 5213 Guniting—All Operations & Drivers, et al
- 5220 Parking Areas and Driveways—Construction—Asphalt—All Operations & Drivers, et al
- 5506 Street or Road Construction—All Operations & Drivers, et al
- 5538 Greenhouse Erection—All Operations & Drivers, et al
- 6045 Breakwater or Jetty Construction—All Operations to Completion & Drivers, et al
- 6202 Derrick or Oil Rig Erecting or Dismantling—All Operations & Drivers
- 6205 Sulphur Producing—All Employees & Drivers, et al
- 6206 Oil or Gas Well—Perforating of Casing—All Employees & Drivers, et al
- 6306 Caisson Work—All Operations to Completion & Drivers, et al

Texas Mutual considers eliminating payroll separation for classification code 5606 and 8227 operations and assigning those operations to the proposed new classifications to be a significant change from the current version of the *Basic Manual*. Because the rates for codes 5606 and 8227 are lower than the rates for the above-listed classifications (with the exception of code 6205, which has a lower rate), eliminating codes 5606 and 8227 as exceptions will result in a higher premium for the affected operations.

Additionally, it should be noted that not all phraseologies for the above-referenced classification codes have similar “All” expressions (with the exception of code 6306). For example, as shown in the chart below, under the proposed rule, classification code 5200 would create statistical inconsistencies by making payroll separation available for some operations while making it unavailable for others.

Separation of 5606 and 8227 Permitted	Separation of 5606 and 8227 Not Permitted
CABLE TENSION SYSTEM INSTALLATION—FOR CONCRETE SLABS & DRIVERS	PARKING AREAS AND DRIVEWAYS—CONSTRUCTION—CONCRETE—ALL OPERATIONS & DRIVERS
CONCRETE OR CEMENT WORK—FLOORS, DRIVEWAYS, SIDEWALKS, CURBS, AND GUTTERS & DRIVERS	SWIMMING POOL CONSTRUCTION—ALL OPERATIONS & DRIVERS
CONCRETE PUMPING OR PLACING—FOR ONE-STORY BUILDINGS & DRIVERS	
CONCRETE SAWING—DRIVEWAYS & SIDEWALKS & DRIVERS	
CURB & GUTTER CONSTRUCTION & DRIVERS	
FIBERGLASS SWIMMING POOL INSTALLATION AND HOOKUP & DRIVERS	
FOUNDATION REPAIR—HOUSE LEVELING & DRIVERS	
HOUSE LEVELING—FOUNDATION REPAIR & DRIVERS	

Recommendation:

To maintain current statistical consistency and avoid unnecessary premium increases for affected employers, Texas Mutual recommends revising proposed rule BM-WORW-C215B as shown below to allow Construction or Erection Permanent Yard Operations, and Contractor – Project Manager, Construction Executive, Construction Manager, or Construction Superintendent operations to be separately rated as currently allowed.

Classification words and phrases

Rule ID: BM-WORW-C215B

Certain words and phrases, when found within classification wording, control, restrict, or explain how the classification applies.

"All Employees", "All Other Employees", "All Operations", or "All Operations to Completion"

Rule ID: BM-WORW-A6519

"All Employees", "All Other Employees", "All Operations", or "All Operations to Completion", when found within classification wording, mean no other classification can be assigned unless an exception is noted in the classification wording. This applies even if some operations or employees are at a separate location. Exceptions exist for specified operations within the business that must be classified separately even if the classification wording includes "All Employees", "All Other Employees", "All Operations", or "All Operations to Completion".

Operations that are classified separately

The following operations within the business are exceptions and must be classified separately, even if the classification wording includes "All Employees", "All Other Employees", "All Operations", or "All Operations to Completion":

- Construction or Erection Permanent Yard (Code 8227)
- Contractor—Project Manager, Construction Executive, Construction Manager, or Construction Superintendent (Code 5606)
- Operations that are standard exceptions, unless the basic classification includes the standard exception operation
- Operations that are general exclusions, or
- Any separate and distinct business as described in Assignment of more than one basic classification.

2. Additional comment and suggestion.

Texas Mutual notes that in *Item B-1444*, NCCI references maritime workers' compensation using the previous name of the applicable act, the United States Longshore and Harbor Workers Act (USL&H). In 1984, an amendment to the Act renamed the Act as the Longshore and Harbor Workers' Compensation Act (LHWCA). In recent publications, NCCI has referenced the law using its current name and acronym and for consistency, may want to do the same in *Item B-1444*.

Office of Chief Clerk
August 16, 2021
Page 4

Thank you again for the opportunity to provide input on NCCI's *Item B-1444—NCCI's Basic Manual for Workers Compensation and Employers Liability Insurance for Texas*. Please contact me with any questions you may have or additional information you may need to evaluate the comments offered by Texas Mutual.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara K. Salyers". The signature is written in a cursive style with a large, looping initial "B".

Barbara K. Salyers
Director Legislative and Regulatory Affairs

cc: Terri Robinson, State Relations Director, National Council on Compensation Insurance