



NORTH CAROLINA RATE BUREAU
5401 Six Forks Road • Raleigh NC • 27609
(919) 783-9790 • www.ncrb.org

January 29, 2002

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Workers Compensation Insurance

Item B-1373-Basic Manual Rules Enhancements

The Bureau has adopted and the North Carolina Commissioner of Insurance has approved a proposal to improve the clarity of various rules contained in the *Basic Manual for Workers Compensation and Employers Liability Insurance*.

The attached Filing Memorandum describes the changes which have been approved to become effective July 1, 2002, applicable to new and renewal business only.

Very truly yours,

Jerry G. Hamrick

Workers Compensation Manager

JGH:dg

Attachment

C-02-3

FILING MEMORANDUM

ITEM B-1373— BASIC MANUAL RULES ENHANCEMENTS

(To be effective 12:01 a.m. on July 1, 2002, applicable to new and renewal business only.)

PURPOSE

The purpose of this filing is to improve the clarity of various rules contained in *Basic Manual for Workers Compensation and Employers Liability Insurance*.

BACKGROUND

The recently filed Item B-1369—2001 Basic Manual for Workers Compensation and Employers Liability Insurance was approved in North Carolina and virtually all other jurisdictions. During the approval process, NCCI gathered all comments made by regulators and affiliates for the purpose of improving the new manual. Based on these comments, we have determined that the changes listed in the Proposal section of this item are necessary to accomplish our goal of providing our regulators and customers with the most comprehensive plain language *Basic Manual* possible.

PROPOSAL

It is proposed that the 2001 *Basic Manual* rules be amended as contained in Exhibit 1. Below is a summary of each of the changes:

RULE 1

- 1) **Rule 1-B-3 General Inclusions.** There are two “exceptions” listed in Rule 1-B-3. The second exception lists three conditions that, if applicable, require a general inclusion operation to be separately classified. The existing rule does not state whether one, two or all of the conditions must apply for the general inclusion operation to be separately classified. Language is added to the second exception to state that if “any” of the three conditions contained in the rule apply, the general inclusion operation must then be separately classified.
- 2) **Rule 1-C-2 Words and Phrases.** Rule 1-C-2 provides definitions of various terms as used in *Basic Manual*. Subheading “h” in this rule states that the terms “or” and “and” are used interchangeably. The interchangeable use of these two words applies *only* to a classification’s Caption or Notes. The interchangeable use of these two words is not intended to apply as used elsewhere in the manual. Where used elsewhere, these two words carry the meaning as used in everyday language. Clarifying language is added to the definition of the terms “or” and “and” as defined under subheading “h” to clarify that this definition only applies to a classification’s Caption and Notes.
- 3) **Rule 1-D-3 Assignment of More Than One Basic Classification.**
 - Rule 1-D-3-c(1) allows for the assignment of an additional classification if the insured conducts more than one operation in a state. To qualify for a separate classification, three conditions are listed, all of which must be met. The current rule does not state whether one, two or all of the conditions must be met. Rule 1-D-3-c(1) is amended to clarify that all *three* listed conditions must be met for the addition of a secondary classification.

The enclosed materials are copyrighted materials of the National Council on Compensation Insurance, Inc. (“NCCI”). The use of these materials may be governed by a separate contractual agreement between NCCI and its licensees such as an affiliation agreement between you and NCCI. Unless permitted by NCCI, you may not copy, create derivative works (by way of example, create or supplement your own works, databases, software, publications, manuals, or other materials), display, perform, or use the materials, in whole or in part, in any media. Such actions taken by you, or by your direction, may be in violation of federal copyright and other commercial laws. NCCI does not permit or acquiesce such use of its materials. In the event such use is contemplated or desired, please contact NCCI’s Legal Department for permission.

© 2001 National Council on Compensation Insurance, Inc.

ITEM B-1373— BASIC MANUAL RULES ENHANCEMENTS

- Rule 1-D-3-c(3) states that an additional operation not encompassed in the classification assigned to the insured's principal business is separately classified when the additional operation has a rate that is higher than or equal to the insured's principal business. The existing rule does not state whether the higher rated classification applies only to the additional operation or to the principal business as well. Rule 1-D-3-c(3) is amended to clarify that the assignment of a higher rated classification under this rule applies only to the additional operation, not to the principal operation.
 - Rule 1-D-3-d(2) omitted the term "general contractor" toward the end of the sentence. This term is added to properly complete the sentence.
- 4) **Rule 1-E Miscellaneous Employees.** Rule 1-E-2 provides a partial list of job duties performed by miscellaneous employees. It is believed that additional language for two duties, construction superintendents and yard workers, is needed to better clarify this rule. Language is added to better clarify the proper classification of miscellaneous employees that have job titles of construction superintendents or construction yard workers. Employees performing these job duties are considered miscellaneous employees and are classified to the governing code of the business unless they meet the eligibility criteria of Code 5606—Contractor—Executive Supervisor or Construction Superintendent, or 8227—Construction or Erection Permanent Yard. Reference to Codes 5606 and 8227 is added to this section to clarify that eligible employees that meet the requirements of the referenced classification are not considered miscellaneous employees. The rule is also rearranged to a "bullet" format to improve its readability.
 - 5) **Rule 1-F Changes or Corrections in Classifications.** Information provided under this rule is contained in four subsections. The fourth subsection contains general information. Language is added to clarify that the information applies to the rule as a whole.

RULE 2

- 1) **Rule 2-B-1-f Payroll.** The word "would" was inadvertently omitted from Rule 2-B-1-f in the 2001 *Basic Manual*. "Would" is inserted to clarify the intent of the rule.
- 2) **Rule 2-B-1-k Payroll.** The language in this rule referencing the insured's records is changed to be more consistent with the language used in Rule 2-B-1-j.
- 3) **Rule 2-D-2 Payroll Limitations.** The first sentence is changed to better reflect the intent of the rule.
- 4) **Rule 2-E-1 Executive Officers.** The second paragraph of this rule is changed to indicate that a carrier may issue one or more policies for one risk in certain cases.
- 5) **Rule 2-E-2-a Treatment.** The word "manual" has been replaced with "rule." This change clarifies how the terms "members" and "managers" are used with regard to limited liability companies.
- 6) **Rule 2-F-1 Idle Time.** The exception regarding non-striking employees is incorporated into the bullet list. A note is added to address where to find idle time rules for construction, erection and stevedoring risks.

RULE 3

- 1) **Rule 3-A-2 ARD Table 3.** The second bullet in the second row of ARD Table 3 is unclear in relation to the bullet immediately above. Language is added to clarify that the division of a long-term policy by increments will determine either the first or last unit of less than 12 months as a short-term policy for ARD purposes.
- 2) **Rule 3-A-3 Cancellation Provisions Table 4.** The basis for determining the short-rate percentage stated in step 5 is not clear. Language is added to clarify that the short-rate percentage is based on the extended number of days determined in step 4.
- 3) **Rule 3-A-4 Classifications, Loss Costs or Rates Subject to Admiralty Law, FELA, and USL&HW Act.** The 2001 *Basic Manual* did not include information on how premium is determined for extensions of the USL&HW Act. This information is added as the newly created Rule 3-A-4-d.

ITEM B-1373— BASIC MANUAL RULES ENHANCEMENTS

4) Rule 3-A-14-b Increased Limits of Liability.

- The addition of the word “manual” to Rule 3-A-14-b(1)(b) clarifies the long-standing rule on how additional premium for increased limits is determined.
- As noted in item 3 above, clarification that premium for extensions of the USL&HW Act is needed in the manual. Therefore, Rule 3-A-14-b(5) is changed to reference the extensions of the USL&HW Act.

5) Rule 3-A-16-a Minimum Premium—Standard Policy. This rule is restated to clarify that only a single minimum premium is shown on the Information Page of the policy, rather than a minimum premium for *each classification* included on the policy as currently stated.**6) Rule 3-A-19-a(2) Premium Discount—With Retrospective Rating.** The addition of the word “standard” to Rule 3-A-19-a(2) clarifies how the total premium discount is distributed on a multistate policy. This language was included in the 1996 *Basic Manual*.**IMPACT**

There will be no premium impact as a result of changes made by this filing. As part of NCCI’s continuing effort to simplify and clarify manual rules, we anticipate that these changes will enhance the understanding of *Basic Manual*.

IMPLEMENTATION

Exhibit 1 details the changes made to *Basic Manual for Workers Compensation and Employers Liability Insurance* to be effective July 1, 2002 for all new and renewal business.

BASIC MANUAL

RULES

RULE 1—CLASSIFICATION ASSIGNMENT

B. EXPLANATION OF CLASSIFICATIONS

3. General Inclusions

Exceptions:

A general inclusion operation must be separately classified if any of the following conditions apply:

- The operation is conducted as a separate and distinct business of the insured (*refer to Rule 1-D-3*).
- The operation is specifically excluded in the wording of the basic classification.
- The principal business is described by a standard exception classification.

Refer to User's Guide for an example.

C. CLASSIFICATION WORDING

2. Words and Phrases

h. "Or" or "And"

The terms "or" or "and" mean and/or. This definition applies only to these terms as used in a classification's Caption or Notes.

Refer to User's Guide for an example.

D. CLASSIFICATION PROCEDURES

3. Assignment of More Than One Basic Classification

c. The insured conducts more than one operation in a state.

(1) For purposes of this rule, an insured is conducting more than one operation in a state if portions of the insured's operations in that state are not encompassed by the classification applicable to the insured's principal business. To qualify for a separate classification, the insured's additional operation must meet all of the following conditions:

- Be able to exist as a separate business if the insured's principal business in the state ceased to exist.
- Be located in a separate building, or on a separate floor in the same building, or on the same floor physically separated from the principal business by structural partitions. Employees engaged in the principal business must be protected from the operating hazards of the separate additional operations.
- Maintain proper payroll records. *Refer to Rule 2-G for the description of proper payroll records.*

Refer to User's Guide for an example.

(3) If the additional operation does not meet all conditions listed above in c(1) and is not encompassed in the classification applicable to the insured's principal business and has a rate:

- *Lower* than the insured's principal business, assign ~~this~~ the additional operation to the same classification as the insured's principal business
- *Higher* than or equal to the insured's principal business, assign ~~this~~ the additional operation to the classification that describes the additional operation

Note: If the insured does not maintain verifiable payroll records specific to the additional higher rated operation, then assign the principal and the additional operation to the higher rated classification. (*Refer to Rule 2-G-2 for the description of proper payroll records.*)

d. Construction or Erection Operations

(2) Uninsured Subcontractors

Uninsured subcontractors covered under the principal or general contractor's policy are classified on the basis of the classifications that would apply if the work were performed by the principal's or general contractor's own employees.

*Refer to **User's Guide** for an example.*

E. MISCELLANEOUS EMPLOYEES

~~2. Miscellaneous employees include general superintendents (other than construction superintendents), maintenance or power plant employees, shipping or receiving clerks, and yard workers (other than construction).~~

2. Miscellaneous employees include:

- General superintendents other than construction superintendents that meet the requirements of Code 5606—Contractor—Executive Supervisor or Construction Superintendent
- Maintenance or power plant employees
- Shipping or receiving clerks
- Yard workers other than construction yard employees properly assigned to Code 8227—Construction or Erection Permanent Yard

*Refer to **User's Guide** for an example. Refer to Rule 1-D-5 if the governing classification is a standard exception.*

F. CHANGES OR CORRECTIONS IN CLASSIFICATIONS

4. ~~For purposes of Rule 1-F, the reallocation of payroll among classifications on the policy is not considered a change or correction in classification(s).~~

*Refer to **User's Guide** for an example.*

RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION

B. PAYROLL

For purposes of this manual, payroll means money or substitutes for money.

1. Includes:

- f. Payment by an employer of amounts that ~~would~~ have been withheld from employees to meet statutory obligations for insurance or pension plans such as the Federal Social Security Act or Medicare.
- k. The value of meals received by employees as part of their pay. ~~This must be shown in the insured's records.~~ to the extent shown in the insured's records.

D. PAYROLL LIMITATIONS

- 2. Specific limitations ~~may apply~~ to payroll for Executive Officers and to classifications with notes that indicate payroll limitations ~~may apply~~. Payroll used to calculate premium must exclude that part of the employee's average weekly pay that exceeds the applicable weekly limitation, provided:
 - Books and records are maintained to show separately that the total payroll earned by each employee is in excess of the weekly payroll limitation for the total time employed during the policy period, and
 - Separate records are maintained, in summary, by classification for such employees.

Refer to state pages for specific limitations.

E. EXECUTIVE OFFICERS, MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS, AND SOLE PROPRIETORS

1. Executive Officers

Executive Officers of a corporation or unincorporated association are the president, vice president, secretary, treasurer, or any other officer appointed in accordance with the charter or bylaws of such entity. For general election of coverage information, *refer to C-1 in **User's Guide***. For state election of coverage information, *refer to Election of Coverages Reference Table in **User's Guide***.

Executive officers may be paid by one or more corporations. In some cases, the multiple corporations may be insured by a single carrier under one or more policies. ~~a single policy~~. If so, the multiple corporations are considered a single unit with respect to the application of the executive officer rule. In all other cases, the rule applies on a policy basis. *Refer to Rule 3-A-15 regarding majority interest*. *Refer to **Experience Rating Plan Manual** for rules regarding combination of entities*.

2. Members of Limited Liability Companies

a. Treatment

For purposes of this ~~manual rule~~, any references to members or managers will collectively be referred to as *members* of limited liability companies. The reason for this is that terminology for members and managers varies by state.

To determine if a member of a limited liability company is to be treated as an executive officer, partner, or sole proprietor, *refer to Election of Coverages Reference Table in **User's Guide***.

F. WAGES FOR TIME NOT WORKED

1. Idle Time

Some employers pay employees for extra time not worked. All wages paid to the employee for such idle time are not considered overtime and must be included in payroll. These wages are assigned to the classification for work normally performed by the employee under the following circumstances:

- Suspension or delay of work due to weather conditions
- Delays while waiting for materials
- Delays while waiting for another party to complete certain work
- Delays arising from breakdown in equipment
- "Stand-by" time where employees such as operators of cranes, hoists or other equipment are on the job but their active services are not required continuously
- Special union requirements or agreements between employer and employees calling for pay for idle time under specific circumstances
- Inability of non-striking employees to perform normal duties due to other employees who are on strike. If non-striking employees perform absolutely no work for their employer and are not present at their employer's premises or job sites during a strike period, their payroll must be assigned to Code 8810—Clerical Office Employees, provided adequate records are maintained by the employer.
- All other causes of a similar nature

*Refer to **User's Guide** for an example.*

Refer to Rule 2-F-2 for the treatment of idle time by construction, erection or stevedoring risks.

Exception to F-1 above:

~~If non-striking employees perform absolutely no work for their employer and are not present at their employer's premises or job sites during a strike period, their payroll must be assigned to Code 8810—Clerical Office Employees, provided adequate records are maintained by the employer.~~

RULE 3—RATING DEFINITIONS AND APPLICATION OF PREMIUM ELEMENTS

A. EXPLANATION AND APPLICATION

2. Anniversary Rating Date (ARD)

ARD Table 3

For other situations such as . . .	The insurance carrier must apply . . .
A long-term policy (issued for a period longer than one year and 16 days, other than a Three-Year Fixed-Rate Policy) . . .	<p>All rules, classifications and rates to individual units as if a separate policy had been issued.</p> <ul style="list-style-type: none"> • Divide the policy into consecutive units of 12 months each. • This division will designate either the first or last unit of less than 12 months as a short-term policy. <p><i>Refer to User's Guide for an example.</i></p>
A Three-Year Fixed-Rate Policy . . .	<p>The rates in force on the effective date of the policy without change until its termination.</p> <p>Exception: A single rate revision resulting in an increase of 10% or more on outstanding policies must be applied to the remaining portion of the policy.</p>

3. Cancellation Provisions

b. Reasons for Cancellation and Premium Determination

Cancellation Provisions Table 4

If . . .	Then . . .
The policy is cancelled by the insured, except when retiring from the business . . .	<p>The premium for the cancelled policy must be calculated as follows, based on the Short-Rate Cancellation Table located in the Appendix:</p> <ol style="list-style-type: none"> 1. Determine the payroll developed during the period the policy was in effect. 2. Determine the full policy payroll by extending such payroll pro rata based on the number of days for which the policy was written divided by the number of days the policy remained in force. 3. Calculate the extended number of days by using the following formula: $\frac{\text{number of days the policy was in effect}}{\text{number of days for which the policy was written}} \times 365$ 4. Apply authorized rates to such payroll. If the policy was written for a one-year period, the extended number of days is the number of days the policy was in effect. 5. Based on the extended number of days, apply the short-rate percentage shown in the Short Rate Cancellation Table located in the Appendix to the premium calculated on the basis of the extended payroll. This result is the short-rate portion of the premium. 6. If applicable: <ul style="list-style-type: none"> • Apply any experience rating modification • Apply any premium discount based on the final earned total standard premium • Add the short-rate portion of the expense constant but not less than \$15 7. The total earned premium for the cancelled policy must not be less than the annual minimum premium applicable to the policy.

4. Classifications, Loss Costs or Rates Subject to Admiralty Law, FELA, and USL&HW Act

d. Extensions of the USL&HW Act

Premium for extensions of the USL&HW Act is determined in the same manner as the premium for the USL&HW Act. Refer to *User's Guide B* and *User's Guide F-7* for more information on these extensions.

14. Limits of Liability

b. Increased Limits of Liability

(1) Standard Policy

Employers Liability (E/L) Increased Limits Factor is a factor that is applied to the manual premium if the employer chooses to increase its standard limits under Part Two—Employers Liability.

If the limits of liability under Part Two are increased:

- (a) The limits of liability must be the same for all states specified in Item 3A of the Information Page of the policy.
- (b) The additional premium for increased limits must be determined by multiplying the total manual premium by the percentage in the Table for Increased Limits.
- (c) In competitive rating jurisdictions, the additional premium must not be less than the minimum premium, if any, filed by or on behalf of the carrier and approved for use by the appropriate insurance regulatory authority.
- (d) In administered pricing jurisdictions, the additional premium must not be less than the minimum premium shown in the Table for Increased Limits.
- (e) For assigned risk policies, the additional premium must not be less than the minimum premium shown in the Table for Increased Limits.

(5) USL&HW Act and Extensions of the USL&HW Act

Rule 3-A-14-b(1) above applies to policies that include coverage for the USL&HW Act and/or its extensions.

16. Minimum Premium

a. Standard Policy

Minimum Premium is the lowest premium that is required in order to provide insurance under the Standard Policy. Minimum premium for each classification must be shown on the Information Page of the policy. Minimum premium is not subject to an experience rating modification. For details, refer to *User's Guide D-2-g(7)*.

In competitive rating jurisdictions, minimum premiums are filed by or on behalf of the carrier. In administered pricing jurisdictions, the minimum premiums are shown on the state pages.

19. Premium Discount

a. Determination of Premium Discount

(2) With Retrospective Rating

The portion of the standard premium subject to a Retrospective Rating Plan is not subject to premium discount.

Total the premium of all entities to determine the amount subject to the Retrospective Rating Plan. The remainder of that standard premium is subject to premium discount and is calculated as follows:

- (a) Determine the discount (x) as if none of the premium is subject to retrospective rating
- (b) Determine the discount (y) for the premium subject to retrospective rating only
- (c) The premium discount is the difference between (x) and (y)

The total premium discount is distributed by state by allocating the state portion of standard premium to the premium discount.

Refer to *User's Guide* for an example.