

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

PROPOSED DECISION

**JANUARY 1, 2020 WORKERS' COMPENSATION INSURANCE
CLASSIFICATION AND RATING RULES**

FILE NUMBER REG-2019-00019

In the Matter of: Proposed adoption or amendment of the Insurance Commissioner's regulations pertaining to the California Workers' Compensation Uniform Statistical Reporting Plan–1995, Miscellaneous Regulations for the Recording and Reporting of Data–1995, and the California Workers' Compensation Experience Rating Plan–1995. These regulations will be effective on January 1, 2020.

SUMMARY OF PROCEEDINGS

The California Department of Insurance ("Department") held a public hearing in the above-captioned matter on July 30, 2019, at the time and place set forth in the Notice of Proposed Action and Notice of Public Hearing, File Number REG-2019-00019, dated June 27, 2019. A copy of the Notice is included in the record. The record closed on July 31, 2019.

The Department distributed copies of the Notices to persons and entities referenced in the record. The Notices included a summary of the proposed changes and instructions for interested persons who wanted to view a copy of the information submitted to the Insurance Commissioner in connection with the proposed changes. The Workers' Compensation Insurance Rating Bureau ("WCIRB") submitted a filing letter and related documents on June 26, 2019, which was available for inspection by the public at the San Francisco office of the Department and were available online at the WCIRB's website, www.wcirb.com.

The WCIRB's filing proposes amendments to the California Workers' Compensation Uniform Statistical Reporting Plan–1995, Miscellaneous Regulations for the Recording and Reporting of Data–1995, and California Workers' Compensation Experience Rating Plan–1995.

The Department accepted testimony and written comments at a hearing in San Francisco on July 30, 2019. The Hearing Officer announced that the record would remain open until 5:00 p.m. on July 31, 2019, to enable interested persons to submit additional written comments. The matter having been duly heard and considered, the Department now presents its review, analysis, and Proposed Decision and Order.

**REVIEW OF PROPOSED CHANGES TO THE WORKERS' COMPENSATION
UNIFORM STATISTICAL REPORTING PLAN-1995, THE MISCELLANEOUS
REGULATIONS FOR THE RECORDING AND REPORTING OF DATA-1995
AND THE CALIFORNIA WORKERS' COMPENSATION EXPERIENCE
RATING PLAN-1995**

Amendments to the California Workers' Compensation Uniform Statistical Reporting Plan-1995 (USRP)

The WCIRB proposed amendments to the USRP to be effective on January 1, 2020 and applied to policies with an effective date on or after January 1, 2020. The proposed amendments are contained in the WCIRB's filing and are summarized in the Notice of Proposed Action.

1. Proposed amendments to Classifications 5183(1)/5187(1) (plumbing).

Amendments to Plumbing Classification

The Plumbing-Heating Cooling Contractor's Association ("PHCC") submitted a comment letter dated July 29, 2019 objecting to amending Classifications 5183(1) and 5187(1) to add "yard or storage operations," which clarifies that it applies to employees who perform gas, steam, hot water, or other pipe fittings installation, including house connections installation. The commenter bases its objection on the fact that workers in Classifications 5183(1) and 5187(1) regularly travel, perform their work under a variety of work environments, and exercise substantial control over their work as opposed to a shop, yard, or storage employee, who is generally not expected to travel, would not typically perform gas, steam, hot water, or other pipe fitting installation, including house connections installation, and would usually operate under close supervision of a more senior employee. The commenter asserts that shop, yard or storage employees should have a distinct classification to reflect a reduced risk of loss.

The WCIRB responded to PHCC's objections in comments at the hearing on July 30, 2019, as well as in a letter dated July 31, 2019. The WCIRB states that the proposed amendments to Classifications 5183(1)/5187(1) do not change their scope, in that these Classifications already include shop operations and already apply to the shop employees of plumbing, heating and cooling contractors. The proposed change merely adopts terminology that is in alignment with other construction and erection classifications. The WCIRB states that no employees or operations would be reclassified as a result of this change.

After careful consideration of PHCC's comments as well as a review of the proposed

changes, the undersigned recommends that the proposed amendments be adopted. The proposed changes to Classifications 5183(1) and 5187(1) are intended to merely clarify their applicability and should not result in the reclassification of employees. The proposed change fosters consistency and I recommend that it be adopted.

Change in hourly wage threshold from \$26 to \$28 per hour

PHCC commented, in its July 29th letter, that it objects to the proposed change in the wage threshold regarding Classification 5187(1), which would raise the threshold from \$26 to \$28 per hour. The commenter does not believe that the proposed change would result in a safer industry, result in fewer claims, or have any salutary impact on workers' compensation payroll costs. The commenter also believes that the proposed change would place an unanticipated burden on contractors who may have executed contracts for work that overlap the effective date of the change and the workers' compensation policy. The commenter is concerned that contractors will be faced with a decision to raise wages or pay higher workers' compensation premiums due to the threshold change. Finally, the commenter believes that the proposed change targets non-signatory contractors, service and repair contractors, and those with a younger work force who may be in the early years of their careers, and would particularly impact small and minority-owned service and repair contractors.

The WCIRB notes, in its oral comments at the hearing as well as in its letter dated July 31, 2019, that the Commissioner adopted the Dual Classification by Wage Level Program in 1986 following a study that addressed employer concerns about inequities in premiums due to variations in wage levels for construction employees. The study results showed a significant variation in wages paid by employers and a significant disparity in claim costs per \$100 of payroll by wage level. The Program, implemented in 1986, segregates a classification into two distinct classifications based upon the hourly wage paid to the employee. There are currently 16 pairs of classifications within this dual wage system, all within the construction industry. The dual wage system reflects that contractors in those classifications that are paid high wages had a much lower loss to payroll experience than those that are paid lower wages. The current wage threshold level of \$26 per hour has not been updated in six years and during that time, wage inflation in the plumbing industry has increased by 7%, which equates to an increase from \$26 per hour to \$28 per hour.

The proposed amendment is consistent with the Dual Classification by Wage Level Program that the Commissioner implemented in 1986. The undersigned finds no compelling basis to change this longstanding rule and thus, recommends that the proposed amendments be adopted.

2. Proposed amendments to Classifications 8111(1) and 8010.

P&F Distributors, an employer, provided oral and written comments objecting to the elimination of 8111(1) and the reassignment of the operations currently assigned to that classification to 8010. Under the proposed amendment, P&F's operations, which are currently assigned to 8111(1), would be reassigned to 8010. P&F's operations include the delivery and supply of piping for construction jobs; P&F does not have a contractor's

license and occasionally performs pipe fusion operations at customer's job site locations. P&F asserts that pipe fusion operations at customers' job site locations should be included in the Plumbers-Supplies classification, 8111(1) and not in a construction classification. P&F asserts that it should remain in the Plumbers-Supplies classification, 8111(1). In the alternative, P&F argues that if 8111(1) is to be eliminated, a new classification should be created unique to their business operation. P&F asserts that the newly proposed reassignment of its operations to Classification 8010 mischaracterizes the type of work they perform and will dramatically increase their rate. P&F also raised a dispute it had regarding an Administrative Hearing Bureau appeal and the WCIRB's subsequent meeting with P&F, in which the WCIRB agreed to suspend the disputed classification of pipe fusion operations at customers' job site locations pending a review of operations associated with Classification 8011(1). P&F says it withdrew its appeal based upon the revised inspection report but the WCIRB then confirmed that its fusion operation would be assignable to 8010.

The WCIRB provided oral comments at the hearing as well as written comments in a letter dated July 31, 2019. The WCIRB noted that delivery operations are currently assignable to Classification 8011(1) and under the proposed amendment, they will be assignable to proposed Classification 8010. However, the WCIRB asserts that the fusion process that P&F performs at construction sites is not within the scope of current Classification 8011(1) and similarly, it would not be within the scope of newly amended Classification 8010. P&F's fusion operations that are sometimes performed at construction worksites are currently assignable to the construction classification and will continue to be assignable to the construction classification if the proposed amendment is adopted.

After careful consideration of P&F's written and oral comments, the WCIRB's written and oral comments, and the proposed changes, the undersigned recommends that the proposed amendments be adopted. Fusion activities at a worksite are not assignable to current Classification 8011(1) and similarly, will not be assignable to proposed Classification 8010. Any prior misclassification of fusion operations and the resulting appeal to the Administrative Hearing Bureau as to P&F specifically are not within the scope of this rulemaking. The proposed amendments are reasonable and consistent with the purpose of the USRP, which requires that California's classification system be uniform and tailored to address operations without regard to specific employers so as to avoid inconsistency between employers with like operations.

Insurance Code § 11734, subdivision (b), requires the commissioner to designate a rating organization to assist him or her in gathering, compiling, and reporting relevant statistical information, and to develop a classification system. Subdivision (c) requires the designated rating organization to develop and file manual rules, subject to the approval of the commissioner, reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan, and any classification systems that may be in effect. The WCIRB's proposed amendments are consistent with the concept of grouping businesses with relatively similar operations and exposures into homogenous classifications.

3. Other Proposed Amendments

The Department has reviewed the WCIRB's other proposed amendments to the USRP and received no objections as to those items. As to those items, the proposed amendments are reasonable and consistent with the purpose of the USRP. This proposed decision recommends, therefore, that the amendments be approved.

Amendments to the Miscellaneous Regulations for the Recording and Reporting of Data–1995

The WCIRB proposed amendments to the Miscellaneous Regulations for the Recording and Reporting of Data–1995 to be effective on January 1, 2020, and applied to a policy with an effective date on or after January 1, 2020. The proposed amendments are contained in the WCIRB's filing and are summarized in the Notice of Proposed Action.

The Department reviewed the WCIRB's proposed amendments and received no objections to the proposed amendments. The proposed amendments are reasonable and consistent with the purpose of these Miscellaneous Regulations for the Recording and Reporting of Data–1995. This proposed decision recommends, therefore, that the amendments be approved.

Amendments to the California Workers' Compensation Experience Rating Plan–1995 (ERP)

The WCIRB proposed amendments to the ERP to be effective on January 1, 2020 and applied as of the rating effective date of a risk on or after January 1, 2020. The proposed amendments are contained in the WCIRB's filing and are summarized in the Notice of Proposed Action.

The Department reviewed the WCIRB's proposed amendments and received no objections to the proposed amendments. The proposed amendments are reasonable and consistent with the purpose of the ERP. This proposed decision recommends, therefore, that the amendments be approved.

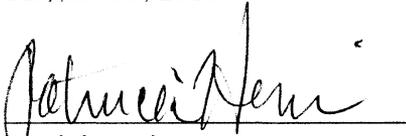
PROPOSED ORDER

IT IS ORDERED, by virtue of the authority vested in the Insurance Commissioner of the State of California by California Insurance Code sections 11734, 11750(a), 11750.3, 11751.5, and 11751.8 that the proposed revisions to the California Workers' Compensation Uniform Statistical Reporting Plan–1995, the Miscellaneous Regulations for the Recording and Reporting of Data–1995 and the California Workers' Compensation Experience Rating Plan–1995 filed by the WCIRB and Sections 2318.6, 2353.1 and 2354 of Title 10 of the California Code of Regulations are hereby amended and modified in the respects specified above; and

IT IS FURTHER ORDERED that these regulations shall be effective January 1, 2020.

I HEREBY CERTIFY that the foregoing constitutes my Proposed Decision and Proposed Order in the above entitled matter as a result of my review of the record and the comments received and I hereby recommend its adoption as the Decision and Order of the Insurance Commissioner of the State of California.

August 30, 2019

A handwritten signature in cursive script, appearing to read "Patricia Hein", written over a horizontal line.

Patricia Hein
Attorney IV

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DEPARTMENT OF INSURANCE**

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FILE NUMBER REG-2019-00019

DECISION AND ORDER

I hereby adopt the Proposed Decision and Proposed Order of Patricia Hein, dated August 30, 2019, in the above entitled matter as my Decision.

WHEREFORE, IT IS ORDERED that the WCIRB amend the California Workers' Compensation Uniform Statistical Reporting Plan-1995, Miscellaneous Regulations for the Recording and Reporting of Data-1995, and the California Workers' Compensation Experience Rating Plan-1995 as set forth in the Proposed Decision.

IT IS SO ORDERED THIS 5th DAY OF SEPTEMBER, 2019.



RICARDO LARA
Insurance Commissioner