

No. **3512**

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE

Date: August 29, 2014

Subject Considered:

**AMENDMENTS TO THE
NATIONAL COUNCIL ON COMPENSATION INSURANCE
BASIC MANUAL AND THE NATIONAL COUNCIL ON COMPENSATION INSURANCE
FORMS MANUAL
(NCCI ITEM NO. 02-TX-2014)**

The commissioner of insurance considers amendments to the *National Council on Compensation Insurance (NCCI) Basic Manual* and the *NCCI Forms Manual*, as proposed in *Item 02-TX-2014—Update Federal Mine Safety and Health Act References and Eliminate Per Passenger Seat Surcharge (Basic Manual and Forms Manual)* (TDI ECase No. 6776).

Item 02-TX-2014 updates statutory references and form language in the *NCCI Basic Manual* and *NCCI Forms Manual*, eliminates the per passenger seat surcharge, and requires that aircraft losses be reported to the applicable classification code instead of to Statistical Code 0088.

After considering the filing, the commissioner adopts the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. NCCI filed a request on April 1, 2014, to amend the *NCCI Basic Manual* and the *NCCI Forms Manual*. A copy of the full text of the filing and related exhibits has been on file with the TDI chief clerk since then. The filing and exhibits are incorporated by reference into this order.
2. TDI published notice of the filing on the TDI website on June 24, 2014, at www.tdi.texas.gov/rules/2014/nccimanual.html, and distributed notice of the filing to electronic news subscribers on June 25, 2014.
3. Comments on the filing were due by 5:00 p.m., Central time, on July 25, 2014.

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4. TDI received no comments or requests for a hearing on the filing.
5. *Item 02-TX-2014* updates references to the Federal Mine Safety and Health Act of 1977, which amended the Federal Coal Mine Health and Safety Act of 1969, in the following rules in the *NCCI Basic Manual* and in the following rules and forms in the *NCCI Forms Manual*.
 - *NCCI Basic Manual* Rule 3-A-12 – Coal Mine Disease Charge (Federal Coal Mine Safety and Health Act)
 - *NCCI Basic Manual* Rule 3-A-20 – Standard Premium
 - *NCCI Forms Manual* Rule 4 – Form/Endorsement Numbering System
 - *NCCI Forms Manual* – Information Page Notes (WC 00 00 01 A)
 - *NCCI Forms Manual* – Part Two C. 8. of the Workers Compensation and Employers Liability Insurance Policy (WC 00 00 00 B)
 - *NCCI Forms Manual* – Federal Coal Mine Safety and Health Act Coverage Endorsement (WC 00 01 02 A).
6. *Item 02-TX-2014* eliminates the per passenger seat surcharge. This surcharge applies to an insured's employees, other than the flight crew, while passengers on the insured's noncommercial, nonscheduled aircraft. The current passenger seat surcharge is \$100 per passenger seat, subject to a maximum of \$1,000 per aircraft.
7. *Item 02-TX-2014* requires that aircraft losses be reported to the applicable classification code, instead of to Statistical Code 0088—Aircraft Operation—Passenger Seat Exposure, which is the code for the per passenger seat surcharge. With the aircraft losses reported under the applicable classification code rather than under Statistical Code 0088, the calculation of the risk's experience rating modification will include those losses, subject to the single-claim and multiple-claim loss limitations. The loss limitations also apply for the aircraft losses in the ratemaking process.
8. To eliminate the per passenger seat surcharge and update the statistical code for aircraft losses, *Item 02-TX-2014*:
 - deletes the general inclusion in *NCCI Basic Manual* Rule 1-B-3 for aircraft travel by employees
 - deletes the aircraft seat surcharges from standard premium in *NCCI Basic Manual* Rule 3-A-20

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- adds the footnote for Code 7421—Aircraft or Helicopter Operation—Transportation of Personnel in Conduct of Employer’s Business—Flying Crew to the Texas Special Classifications in the *NCCI Basic Manual*
 - amends the Texas Workers Compensation Premium Algorithm in the *NCCI Basic Manual* to eliminate the aircraft seat surcharge from the calculation of premium, and
 - deletes the Aircraft Premium Endorsement (WC 00 04 01) in the *NCCI Forms Manual*, as it will be obsolete.
9. The changes in Findings of Fact Nos. 6, 7, and 8 may cause a slight decrease in premium initially. However, including the aircraft losses in the risk’s experience rating modification and in class ratemaking may eventually have a minor premium impact on affected policyholders. Policyholders could begin to see the impact of the changes in two years, when the aircraft losses, which would be subject to the single-claim and multiple-claim loss limitations, would have been fully incorporated into future loss costs, relativities, and experience modifications.
10. *Item 02-TX-2014* updates language in certain forms due to the United States Supreme Court’s decision in *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404 (2009) on punitive damages awarded due to the insured’s willful withholding of maintenance and cure, and to update other statutory references in certain forms and endorsements. The affected forms are:
- *NCCI Forms Manual* – Part Two C. 8, 10, and 12 of the Workers Compensation and Employers Liability Insurance Policy
 - *NCCI Forms Manual* – Outer Continental Shelf Lands Act Coverage Endorsement (WC 00 01 09 B), and
 - *NCCI Forms Manual* – Maritime Coverage Endorsement (WC 00 02 01 A).

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter under Insurance Code Article 5.96 and Sections 2051.201, 2052.002, and 36.001.
2. Commissioner’s Order No. 3142, dated March 21, 2014, established a procedure for the commissioner to consider changes to NCCI’s manuals: 1) NCCI makes a filing; 2) TDI publishes notice of the filing on the TDI website and distributes notice of the filing to subscribers to TDI’s electronic news, with at least a 30-day period for interested persons to submit comments or request a hearing; and 3) the commissioner issues an order approving the filing, approving the filing with changes, or rejecting the filing.

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3. TDI gave proper and timely notice in compliance with Commissioner's Order No. 3142.
4. Amending the *NCCI Basic Manual* and the *NCCI Forms Manual* as *Item 02-TX-2014* proposes is reasonable, and is consistent with Texas workers' compensation statutes and rules.

The commissioner approves NCCI's filing (*Item 02-TX-2014—Update Federal Mine Safety and Health Act References and Eliminate Per Passenger Seat Surcharge (Basic Manual and Forms Manual)*) with no changes, for policies with an effective date on or after 12:01 a.m., January 1, 2015.



Julia Rathgeber
Commissioner of Insurance