

No. **3513**

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE

Date: August 29, 2014

Subject Considered:

**AMENDMENTS TO THE
NATIONAL COUNCIL ON COMPENSATION INSURANCE
RETROSPECTIVE RATING PLAN MANUAL AND THE NATIONAL COUNCIL ON
COMPENSATION INSURANCE FORMS MANUAL
(NCCI ITEM NO. 03-TX-2014)**

The commissioner of insurance considers amendments to the *National Council on Compensation Insurance (NCCI) Retrospective Rating Plan Manual (NCCI Retro Manual)* and the *NCCI Forms Manual*, as proposed in *Item 03-TX-2014—Update Federal Mine Safety and Health Act References; Eliminate Per Passenger Seat Surcharge; Exclude Fraudulent and/or Noncompensable Losses from Incurred Losses (Retrospective Rating Plan and Forms)* (TDI ECase No. 7187).

Item 03-TX-2014 updates statutory references and form language in the *NCCI Retro Manual* and *NCCI Forms Manual*; eliminates the per passenger seat surcharge premium to harmonize with *Item 02-TX-2014*; requires that aircraft losses be reported to the applicable classification code, instead of to Statistical Code 0088; deletes an obsolete reference; and excludes fully fraudulent losses, noncompensable losses, losses from the nonratable element codes, and losses resulting from the application of the terrorism provision from incurred losses used in retrospective rating.

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 Retro Manual* and the national and Texas-specific endorsements and forms in 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.
4. TDI received no comments or requests for a hearing on the filing.
5. *Item 03-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 rule in the *NCCI Retro Manual* and in the following forms in the *NCCI Forms Manual*:
 - *NCCI Retro Manual* Rule I-B-1-f – Standard Premium
 - *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement One-Year Plan (WC 42 05 03 B)
 - *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement Three-Year Plan (WC 42 05 04 B)
 - *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement Long-Term Construction Project (WC 42 05 05 A)
 - *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement Nonratable Catastrophe Element or Surcharge (WC 42 05 10 A)
 - *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement One-Year Plan-Multiple Lines (WC 42 05 12 B)
 - *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement Three-Year Plan-Multiple Lines (WC 42 05 13 B)
 - *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement Long-Term Construction Project-Multiple Lines (WC 42 05 14 A).
6. *Item 03-TX-2014* eliminates the per passenger seat surcharge premium to harmonize with *Item 02-TX-2014*, filed separately, which amends the *NCCI Basic Manual* to eliminate 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 03-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 policyholder's experience modifier 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 to address reporting of aircraft losses, *Item 03-TX-2014*:

- amends *NCCI Retro Manual* Rule 1-B-1-c – Incurred Losses to include losses involving passenger employees resulting from the crash of an aircraft under Classification Code 7421
- deletes the premium developed by the passenger seat surcharge under Classification Code 7421 from *NCCI Retro Manual* Rule 1-B-1-f – Standard Premium
- amends *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement One-Year Plan (WC 42 05 03 B)
- amends *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement Three-Year Plan (WC 42 05 04 B)
- amends *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement Long-Term Construction Project (WC 42 05 05 A)
- amends *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement Nonratable Catastrophe Element or Surcharge (WC 42 05 10 A)
- amends *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement One-Year Plan-Multiple Lines (WC 42 05 12 B)
- amends *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement Three-Year Plan-Multiple Lines (WC 42 05 13 B), and
- amends *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement Long-Term Construction Project-Multiple Lines (WC 42 05 14 A).

9. *Item 03-TX-2014* deletes *NCCI Retro Manual* Rule 1-B-1-i – Statistical Plan to remove the definition of “Statistical Plan.” “Statistical Plan” in *NCCI Retro Manual* Rule 1-B-1-i refers to the *Texas Workers’ Compensation Statistical Plan*, which will soon be obsolete, as the *NCCI Statistical Plan for Workers Compensation and Employers Liability Insurance* will be effective for reporting of data for workers’ compensation policies with an effective date on or after 12:01 a.m. on January 1, 2015. (See Commissioner’s Order No. 3455, dated July 29, 2014.)

10. *Item 03-TX-2014* excludes fully fraudulent and noncompensable losses from incurred losses used in retrospective rating to be consistent with the exclusion of these types of claims for experience rating purposes. To eliminate fully fraudulent claims and noncompensable claims from being part of incurred losses, *Item 03-TX-2014* amends the following rule and forms:

- *NCCI Retro Manual* Rule 1-B-1-c – Incurred Losses to exclude fully fraudulent and noncompensable losses
- *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement One-Year Plan (WC 42 05 03 B)
- *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement Three-Year Plan (WC 42 05 04 B)
- *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement Long-Term Construction Project (WC 42 05 05 A)
- *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement Nonratable Catastrophe Element or Surcharge (WC 42 05 10 A)
- *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement One-Year Plan-Multiple Lines (WC 42 05 12 B)
- *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement Three-Year Plan-Multiple Lines (WC 42 05 13 B)
- *NCCI Forms Manual* – Texas Retrospective Rating Plan Premium Endorsement Long-Term Construction Project-Multiple Lines (WC 42 05 14 A).

11. *Item 03-TX-2014* clarifies *NCCI Retro Manual* Rule 1-B-1-c – Incurred Losses to specifically exclude losses from the nonratable element codes and losses resulting from the application of the terrorism provision.

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.
3. TDI gave proper and timely notice in compliance with Commissioner's Order No. 3142.
4. Amending the *NCCI Retro Manual* and the *NCCI Forms Manual* as *Item 03-TX-2014* proposes is reasonable, and is consistent with Texas workers' compensation statutes and rules.

The commissioner approves NCCI's filing (*Item 03-TX-2014—Update Federal Mine Safety and Health Act References; Eliminate Per Passenger Seat Surcharge; Exclude Fraudulent and/or Noncompensable Losses from Incurred Losses (Retrospective Rating Plan and Forms)*) with no changes, for policies with an effective date on or after 12:01 a.m., January 1, 2015.



Julia Rathgeber
Commissioner of Insurance