

No. **2017-5055**

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE

Date: May 01, 2017

Subject Considered:

AMENDMENTS TO THE
NATIONAL COUNCIL ON COMPENSATION INSURANCE
BASIC MANUAL FOR WORKERS COMPENSATION AND EMPLOYERS LIABILITY
INSURANCE
(NCCI ITEM NO. 01-TX-2016)

NUNC PRO TUNC ORDER

The Department of Insurance (department) considered amendments to correct an inadvertent omission in an exhibit to Commissioner's Order No. 2016-4795. Commissioner's Order No. 2016-4795 eliminated the A-rating process for certain national and state special classification and statistical codes in Texas. It also eliminated the A-rated Texas special classifications for chemical manufacturing operations and domestic workers in NCCI's *Basic Manual for Workers Compensation and Employers Liability Insurance*, as proposed in *Item 01-TX-2016—Elimination of A-Rating Process for Classification and Statistical Codes in NCCI's Manuals* (TDI ECase No. 10765), issued on November 16, 2016.

NCCI's filing mistakenly did not delete one of the classification wordings assigned to chemical manufacturing classification code 4823, "Chemical Mfg – Preservative for Fresh Vegetables." NCCI filed an amended Exhibit 2 to *Item 01-TX-2016* on March 8, 2017, that corrects the omission.

The department orders that Commissioner's Order No. 2016-4795 be amended nunc pro tunc as of the date of the entry to include the amended exhibit. The text of the order remains the same, and reads as follows:

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The commissioner of insurance considered amendments to the National Council on Compensation Insurance *Basic Manual for Workers Compensation and Employers Liability Insurance (Basic Manual)*, (TDI ECase No. 10765; SERFF Tracking No. NCCI-130468058; February 29, 2016).

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

Findings of Fact

1. NCCI filed *Item 01-TX-2016—Elimination of A-Rating Process for Classification and Statistical Codes in NCCI's Manuals* on February 29, 2016, using the procedure adopted in Commissioner's Order No. 3142 for revisions to NCCI's workers compensation manuals. The TDI chief clerk has had copies of the full text of the filing and related exhibits since the filing date. The filing and exhibits are incorporated by reference into this order.
2. NCCI requested that the changes in *Item 01-TX-2016* apply to new and renewal policies with effective dates on and after July 1, 2017.
3. *Item 01-TX-2016* is a filing to eliminate the A-rating process for certain national and state special classification and statistical codes in Texas. *Item 01-TX-2016* also eliminates the A-rated Texas special classifications for chemical manufacturing operations and domestic workers in NCCI's *Basic Manual*.
4. An A-rated classification code is a code for which a carrier evaluates an individual employer (policyholder) to produce rates for that employer, instead of calculating rates based on NCCI's loss costs or TDI's classification relativities. In an A-rated classification code, the rates for the classification code are specific to each employer. A-rates are useful where there is insufficient data to produce advisory loss costs for a classification.
5. For some A-rated classification and statistical codes, NCCI has determined that there is now sufficient data reported to allow NCCI to produce advisory loss costs.
6. Beginning with the 2017 advisory loss cost filing, NCCI will produce advisory loss costs for the following classification and statistical codes. Because advisory loss costs will be available to calculate rates, *Item 01-TX-2016* eliminates the A-rating process for these codes.

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- Classification Codes:
 - 0913—Domestic Workers—Residences—Per Capita Basis
 - 1165—Coal Mining & Drivers
 - 4766—Dynamite Mfg. & Drivers
 - 4777—Blasting Agents—Preparation or Distribution & Drivers
 - 6205—Sulphur Producing—All Employees & Drivers.
 - Statistical Codes:
 - 0059—Disease Experience—Abrasive/Sandblasting
 - 0065—Disease Experience of Incidental Foundries—Steel
 - 0066—Disease Experience of Incidental Foundries—Nonferrous Metals
 - 0067—Disease Experience of Incidental Foundries—Iron.
7. *Item 01-TX-2016* eliminates the following 24 A-rated chemical manufacturing classification codes and reassigns them to two national codes, to be consistent with the way those classifications are handled nationally; and the following seven classification wordings:
- Chemical manufacturing classification codes 4800, 4801, 4802, 4803, 4804, 4805, 4806, 4807, 4808, 4809, 4810, 4811, 4812, 4813, 4814, 4815, 4816, 4817, 4818, 4819, 4820, 4821, 4822, and 4823; and
 - All associated classification wordings for codes 4805, 4807, 4811, 4814, 4815, 4819, and 4823.
8. *Item 01-TX-2016* reassigns the eliminated codes to the following national classification codes, and establishes these codes for use in Texas:
- 4828—Chemical Blending or Mixing NOC—All Operations & Drivers; or
 - 4829—Chemical Mfg. NOC—All Operations & Drivers—Includes Blending or Mixing.
9. To be consistent with the changes in Findings of Fact No. 6-8, *Item 01-TX-2016*:
- revises Texas' exception to Rule 3-A-7-b(1) to remove references to A-rates; and
 - revises national Appendix E.

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10. *Item 01-TX-2016* also proposes to eliminate A-rated classification code 0923—Domestic Workers—Residences—Payroll Basis (classification code 0923) and the associated classification wording. It proposes to:
 - reclassify all domestic workers in Texas to Texas classification code 0913;
 - expand the classification wording for classification code 0913—Domestic Workers—Residences—Per Capita Basis (classification code 0913) to incorporate the definition of domestic workers; and
 - revise Texas' exception to Rule 3-C to remove references to classification code 0923.
11. Insurance Code §2053.051 requires TDI to determine hazards by classification and establish classification relativities. Insurance Code §2053.053 requires that insurers use the classifications TDI establishes. Staff will need to revise the classification relativities to correspond with the changes in *Item 01-TX-2016*. Staff anticipates some impact on premiums as a result of the changes.
12. On June 24, 2016, TDI published notice of the filing on the TDI website at www.tdi.texas.gov/rules/2016/nccimanual.html, and distributed notice of the filing to electronic news subscribers.
13. TDI received one comment on the filing by the July 28, 2016, deadline, and no hearing requests.
14. The commenter stated that its company has used classification code 0923 since its adoption in 2001 and does not have data on the number of covered employees assigned to a classification code, or information on whether the reported payroll relates to part-time or full-time employment.
15. The commenter stated that *Item 01-TX-2016* proposes to classify all domestic workers to Texas classification code 0913, which is a per capita classification and is proposed to no longer be A-rated.
16. The commenter stated that classification code 0913 is the only classification code in Texas that is calculated on a per capita basis, that its current underwriting system is not programmed to calculate premium based on the number of employees assigned to a classification code, and that its current software upgrade project does not include modifications to calculate premium on a per capita basis.

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17. The commenter stated that over 1,800 of its policyholders have employees assigned to classification code 0923.
18. The commenter was concerned that policyholders with lower payrolls could experience a substantial rate increase if the domestic workers currently classified under classification code 0923 were moved to classification code 0913.
19. Because of the lack of data, logistical challenges, and potential costs to policyholders, the commenter requested that the commissioner not approve the elimination of classification code 0923 until July 1, 2019. The delayed effective date would allow time to gather the required information and make the required system upgrades.

Conclusions of Law

1. The commissioner has jurisdiction over this matter under Insurance Code Article 5.96 and §§2051.201, 2053.051, and 2053.053, 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:
 - a) NCCI makes a filing,
 - b) 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
 - c) 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. Delaying the elimination of the A-rating process for classification code 0923 until July 1, 2019, is reasonable, would provide better data, and would minimize adverse impacts for Texas policyholders and carriers.
5. The amendments to the NCCI *Basic Manual*, with the change to retain the A-rating process for classification code 0923 until July 1, 2019, are reasonable, and are consistent with Texas workers compensation statutes and rules.

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6. Applying the changes in *Item 01-TX-2016* to new and renewal policies with effective dates on and after July 1, 2017, with a modified effective date for classification code 0923, is reasonable.

The commissioner approves NCCI's filing, *Item 01-TX-2016—Elimination of A-Rating Process for Classification and Statistical Codes in NCCI's Manuals*, for new and renewal policies with effective dates on and after July 1, 2017, with a change to delay the elimination of the A-rating process for classification code 0923 until July 1, 2019.



Kevin Brady
Deputy Commissioner for Agency Affairs
Texas Department of Insurance
Delegation Order 4506