

No. **2017-5230**

**Official Order
of the
Texas Commissioner of Insurance**

Date: September 28, 2017

Subject Considered:

National Council on Compensation Insurance Filing *Item B-1435*

The Texas Department of Insurance considered amendments to the National Council on Compensation Insurance (NCCI) manuals, proposed in *Item B-1435—Revisions to Basic Manual Classifications and Appendix E—Classifications by Hazard Group, including Trucking and Towing* (TDI ECase No. 12246; SERFF Tracking No. NCCI-130775845; November 22, 2016).

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

Findings of Fact

1. NCCI filed *Item B-1435* on November 22, 2016, using the procedure adopted in Commissioner's Order No. 3142 for revisions to NCCI's workers compensation manuals.
2. The amendments eliminate, revise, and establish classifications; and make nonsubstantive formatting changes and changes for consistency in the following NCCI manuals:
 - *Basic Manual for Workers Compensation and Employers Liability Insurance*;
 - *Statistical Plan for Workers Compensation and Employers Liability Insurance*;
 - *Forms Manual of Workers Compensation and Employers Liability Insurance*; and
 - *Assigned Carrier Performance Standards*.
3. *Item B-1435* eliminates national and state special classifications with low credibility—those that are too small to develop meaningful data for ratemaking purposes.
4. *Item B-1435* revises the classification treatment of the trucking and towing industries by eliminating current national trucking classification codes 7228—Trucking—Local Hauling Only—All Employees & Drivers and 7229—Trucking—Long Distance Hauling—All Employees & Drivers, and reestablishing national trucking classification code 7219—Trucking NOC—All Employees & Drivers. NCCI's stated rationale for the change is that its review of the trucking industry found that:

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- driving radius is not a useful distinction for classification purposes;
 - local and long-haul trucking have common causes of injury and loss costs do not indicate either as being more hazardous than the other;
 - many companies and drivers perform both local and long-haul trucking;
 - the time spent behind the wheel may be similar for local and long-haul trucking, despite differences in the geographic distances driven; and
 - distinguishing between local and long-haul trucking does not necessarily distinguish between interstate and intrastate driving.
5. *Item B-1435* also proposes new classification code 7225—Automobile Towing & Drivers, which is specific to the towing industry. Towing is currently included in the trucking classifications. NCCI's stated rationale for proposing a new code for towing is that:
- the "no other operations" restriction is causing primarily towing operations to be assigned to the automobile repair codes, and the definition of "other operations" was confusing; and
 - the towing industry isn't being classified consistently, which could create a competitive advantage or disadvantage for some employers in the same business.
6. The TDI chief clerk has had copies of the full text of the filing and related exhibits since the filing date.
7. At TDI's request, NCCI amended its original filing on February 6, 2017, to add pages 390-391 to Exhibit 8. The new pages:
- delete the wording for Texas classification code 9015—Automobile Repossession With Storage Lot & Drivers, because the wording for the new national towing classification, classification code 7225—Automobile Towing & Drivers, includes repossession and impound lots; and
 - add the following sentence to the Texas Rule 2-G (Interchange of Labor) Exceptions: "Towing for others is eligible for division of an individual employee's payroll between code 7225 and other classifications." This addition is consistent with the Texas special classification wording for the trucking exception that states, "When trucking operations are a secondary business and conducted as a separate undertaking or enterprise, the payroll of an individual employee may be divided and allocated to other than a trucking classification. Refer to Rule 2-G."
8. On May 5, 2017, TDI published notice of the amended filing on the TDI website at www.tdi.texas.gov/rules/2016/nccimanual.html and distributed notice of the filing to electronic news subscribers.
9. TDI received one comment on the filing by the June 9, 2017, deadline. The comment generally supported the proposed revisions, but requested clarification on the status of 14 existing phraseologies for classification code 7219 that are not referenced in the filing.

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10. At TDI's request, NCCI amended Exhibit 8 again on July 14, 2017, to retain existing Texas special classification code 7219—Trucking—NOC—All Employees & Drivers and its exception. The exception refers to Rule 2-G.
 - As a result, NCCI withdrew two exhibits:
 - Exhibit 5T, the national proposal for classification code 7219—Trucking—Hauling Explosives or Ammunition—All Employees & Drivers; and
 - Exhibit 5W, the national proposal for classification code 7219—Trucking—NOC—All Employees & Drivers.
 - The amendment to Exhibit 8 also proposes a new Texas special classification caption and note, Trucking—Hauling Explosives or Ammunition—All Employees & Drivers, for classification code 7219 to clarify that, like the national classification code, the Texas classification code includes trucking operations engaged in hauling under contract explosives or ammunition.
11. The amended filing and exhibits are incorporated by reference into this order.
12. The changes in *Item B-1435* apply to new and renewal policies effective on and after July 1, 2018.

Conclusions of Law

1. TDI has jurisdiction over this matter under Insurance Code Article 5.96 and Sections 2051.002, 2051.201, 2052.002, 2053.051, 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. The amendments to the NCCI manuals are reasonable and consistent with Texas workers compensation statutes and rules.

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5. Applying the changes in *Item B-1435*, as amended, to new and renewal policies effective on and after July 1, 2018, is reasonable.

TDI approves NCCI's filing, *Item B-1435—Revisions to Basic Manual Classifications and Appendix E—Classifications by Hazard Group, including Trucking and Towing*, as amended, for new and renewal policies effective on and after July 1, 2018.



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Delegation Order 4506