

No. 2019 - 5948

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

Date: APR 26 2019

Subject Considered:

**National Council on Compensation Insurance Filing
*01-TX-2018 - Withdrawal or Termination of Self-Insurance Using a Liability
Transfer Transaction and Establishment of National Experience Rating Plan
Manual Rule 2-E-2***

The subject of this order is the adoption of amendments to the National Council on Compensation Insurance (NCCI) *Basic Manual for Workers Compensation and Employers Liability Insurance (Basic Manual)*, the *Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance (Experience Rating Manual)*, and the *Statistical Plan for Workers Compensation and Employers Liability Insurance (Statistical Plan)*.

Background

NCCI filed *Item 01-TX-2018 - Withdrawal or Termination of Self-Insurance Using a Liability Transfer Transaction and Establishment of National Experience Rating Plan Manual Rule 2-E-2* (SERFF Tracking No. NCCI-131756726) on December 14, 2018, to amend the NCCI *Basic Manual, Experience Rating Manual, and Statistical Plan*.

HB 1989, 85th Legislature, Regular Session (2017) added Texas Labor Code Section 407.045(a-1) to clarify what constitutes an "adequate program to pay all incurred losses" for a certified self-insurer (CSI) to transfer its incurred workers' compensation obligations. Because such transfer is not addressed in NCCI's manuals, TDI requested NCCI to file *Item 01-TX-2018* to allow a workers' compensation policy to be issued in conjunction with such transfer.

TDI adopts the following findings of fact and conclusions of law.

Findings of Fact

1. NCCI filed Item 01-TX-2018 on December 14, 2018, using the procedure adopted in Commissioner's Order No. 3142 for revisions to NCCI's workers' compensation manuals.
2. *Item 01-TX-2018* implements HB 1989, 85th Legislature, Regular Session (2017), concerning the requirements for withdrawal by a certified self-insurer from workers' compensation self-insurance by:
 - Revising exceptions to NCCI manuals to allow a workers' compensation policy to be issued in conjunction with a liability transfer transaction conducted pursuant to:
 - withdrawal of a certified self-insurer from self-insurance under an adequate program as defined in Labor Code Section 407.045(a-1); or
 - termination of a self-insured group's certificate of approval under Labor Code Section 407A.101(b).
 - Replacing the Texas-specific experience rating rule regarding nonaffiliate self-insurer and nonaffiliate carrier data with the national rule but maintaining a single Texas exception to the national rule.
3. The filing, including all exhibits, is incorporated by reference into this order.
4. On February 13, 2019, the Texas Department of Insurance (TDI) published notice of the filing on its website and distributed notice of the filing to electronic news subscribers.
5. TDI did not receive comments or hearing requests by the comment deadline.
6. As filed, the changes in *Item 01-TX-2018* would apply to new and renewal workers' compensation policies effective on or after March 1, 2019.


Conclusions of Law

1. TDI has jurisdiction over this matter under Insurance Code Article 5.96 and Sections 2051.002, 2051.201, 2052.002, 2053.002, 2053.011, 2053.051, 2053.053, and 36.001.
2. TDI gave notice in compliance with Commissioner's Order No. 3142.
3. The amendments to the NCCI *Basic Manual, Experience Rating Manual, and Statistical Plan* are consistent with Insurance Code Article 5.96 and Chapter 2053.
4. Because the proposed effective date of *Item 01-TX-2018* has passed, a later effective date is necessary.

Order

It is ordered that NCCI's filing, *Item 01-TX-2018 - Withdrawal or Termination of Self-Insurance Using a Liability Transfer Transaction and Establishment of National Experience Rating Plan Manual Rule 2-E-2*, for new and renewal workers' compensation policies effective on or after May 1, 2019, is approved.

Kent C. Sullivan
Commissioner of Insurance

By: 
Doug Slape
Chief Deputy Commissioner
Commissioner's Order No. 2018-5528

Recommended by:


Mark Worman, Deputy Commissioner,
Regulatory Policy Division

Reviewed by:

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COMMISSIONER'S ORDER

NCCI Item 01-TX-2018

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A handwritten signature in black ink that reads "Sandra Foreman". The signature is written in a cursive style with a large initial 'S' and a long horizontal stroke at the end.

Sandra Foreman, Staff Attorney,
Office of Policy Development Counsel