

No. **2018-5602**

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

Date: August 10, 2018

Subject Considered:

**National Council on Compensation Insurance
NCCI Filing Items B-1436(FD) and B-1436(RD)
Amendments to Basic Manual Classifications**

The Texas Department of Insurance considered amendments to the National Council on Compensation Insurance (NCCI) *Basic Manual for Workers Compensation and Employers Liability Insurance* proposed in *Items B-1436(FD) and B-1436(RD) - Revisions to Basic Manual Classifications and Appendix E - Classifications by Hazard Group* (TDI ECase No. 14981; SERFF Tracking Nos. NCCI-131257443; and NCCI-131260899).

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

Findings of Fact

1. NCCI filed *Items B-1436(FD) and B-1436(RD)* on November 14, 2017, using the procedure adopted in Commissioner's Order No. 3142 for revisions to NCCI's workers' compensation manuals.
2. On January 11, 2018, NCCI amended *Item B-1436(RD)* by submitting revised Exhibit Fact Sheet 3 to correct the inaccurate reference to Exhibit 3C instead of Exhibit 8 in the Texas proposal, number 4 on Page 33.
3. The amendments in *Item B-1436(FD)*:
 - a) Reformat the following special classifications for improved online search results:
 - i. Building Raising or Moving (Codes 5022, 5057, 5213, 5403);
 - ii. Farm (Codes 0005, 0008, 0011, 0016, 0035, 0037, 0079, 0083, 0113);
 - iii. Wrecking or Demolition—Not Marine (Codes 5022, 5057, 5213, 5403, 6003); and

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- b) Eliminate the state special farm note because it is properly included in the Texas exception to NCCI's *Basic Manual for Workers Compensation and Employers Liability Insurance* Rule 1-D-3-e—Farm Operations.
4. The amendments in *Item B-1436(RD)* clarify the classification treatment for:
 - c) Retirement living centers and nursing homes by assigning healthcare employees of all types of operations to one classification and assigning all other employees to another classification;
 - d) Limousine and taxicab companies to indicate that garage employees be separately rated to Code 8385;
 - e) Digital photography operations by updating phraseologies to address photo developing and printing including digital media and establishing a new Code 8015 for document scanning and quick printing operations;
 - f) Manufacture, service, or repair, and the piloting of an unmanned aircraft system or drone aircraft by establishing new Code 8720 for employers piloting drone aircraft of less than 55 pounds for other businesses; and
 - g) Automobile body repair and automobile repair shops by revising some phraseology notes under Codes 8391 and 8387.
5. The TDI chief clerk has had copies of the full text of the filing, amendment, and related exhibits since the filing date.
6. The filing, amended filing, and all related exhibits are incorporated by reference into this order.
7. On May 23, 2018, TDI published notice of the filing on its website at www.tdi.texas.gov/rules/2018/nccimanual.html and distributed notice of the filing to electronic news subscribers.
8. The comment period closed on June 25, 2018, and TDI did not receive any comments or hearing requests.
9. The changes in *Item B-1436(FD)* apply to new and renewal workers' compensation policies effective on and after October 1, 2018.
10. The changes in *Item B-1436(RD)* apply to new and renewal workers' compensation policies effective on and after July 1, 2019.

Conclusions of Law

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1. TDI has jurisdiction over this matter under Insurance Code Article 5.96 and §§2051.002, 2051.201, 2052.002, 2053.002, 2053.011, 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 Administrative Procedure Act does not apply to Commissioner's actions taken under Article 5.96.
5. The amendments to the NCCI manual are reasonable and consistent with Texas workers' compensation statutes and rules.
6. Applying the changes in *Item B-1436(FD)* to new and renewal workers' compensation policies effective on and after October 1, 2018, is reasonable.
7. Applying the changes in *Item B-1436(RD)*, as amended, to new and renewal workers' compensation policies effective on and after July 1, 2019, is reasonable.

TDI approves NCCI's filing, *Item B-1436(FD)—Revisions to Basic Manual Classifications and Appendix E - Classifications by Hazard Group Domestic Classifications*, as amended, for new and renewal workers' compensation policies effective on and after October 1, 2018.

TDI approves NCCI's filing, *Item B-1436(RD)— Revisions to Basic Manual Classifications and Appendix E - Classifications by Hazard Group Domestic Classifications*, as amended, for new and renewal workers' compensation policies effective on and after July 1, 2019.

/s/ Kent C. Sullivan

Kent C. Sullivan

Commissioner of Insurance