

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
NCCI Filing E-1402)	AND ORDER
)	Division File No. 72766

I. INTRODUCTION

Pursuant to Iowa Code §515A.6(7) (2011), a hearing was held via telephone on October 21, 2011 regarding the proposed revisions to the experience rating plan primary/excess split point value and maximum debit modification formula submitted to the Iowa Insurance Commissioner by NCCI in its filing, E-1402, dated August 2, 2011. The hearing was scheduled as a result of a request by the Independent Insurance Agents of Iowa (“IIAI”) pursuant to Iowa Code §515A.6(7)(b) (2011).

II. JURISDICTION

The Commission has jurisdiction over this proceeding under Iowa Code Chapter 515A (2011).

III. EVIDENCE PRESENTED

In support of its filing, NCCI submitted a document entitled “Experience Rating Item E-1402: Proposed Changes to Split Point and Mod Cap,” which was admitted into evidence and labeled “Exhibit A.” NCCI also submitted the testimony of Tony DiDonato, FCAS, MAAA, Director & Senior Actuary. Mr. DiDonato testified to the purpose and in support of the E-1402 filing.

IIAI submitted the testimony of Jamie Krist. Mr. Krist presented a summary of IIAI’s objections to the E-1402 filing.

Several other individuals contributed argument at the hearing for both parties, however, only Mr. DiDonato and Mr. Krist submitted sworn testimony.

At the conclusion of the hearing the record was held open for the filing of briefs. Both parties submitted briefs, and an additional comment brief was submitted by the Iowa Association of Business and Industry.

The Commissioner has taken into consideration all testimony, argument, and exhibits presented at hearing as well as the submitted briefs.

IV. FINDINGS OF FACT

1. NCCI's E-1402 Filing Does Not Diminish The Commissioner's Regulatory Authority

Iowa Code section 515A.4 requires insurers to file every manual, minimum, class rate, rating schedule or rating plan and every other rating rule, and every modification of these that it proposes to use. *Iowa Code section 515A.4 (2011)*. NCCI is a licensed rate organization in Iowa and makes filings in accordance with section 515A.4. IIAI argues that NCCI's E-1402 filing is impermissible because it diminishes the Commissioner's regulatory authority by evading annual review through automatic adjustments. *See IIAI Brief, p. 1.*

The E-1402 filing proposes a change to the primary/excess split point with annual increases over a three year transition period and anticipates additional changes in subsequent years using a countrywide inflation index. *Exhibit A, p. 4-6*. The primary/excess split point is a component of NCCI's Experience Rating Plan. *Id., E-1402 page 1*. Each proposed change to the split point, as well as any other proposed change to the experience rating plan, is to be filed with the Commissioner pursuant to Iowa Code section 515A.4. The Commissioner must review all filings to determine whether they meet the requirements of Iowa Code Chapter 515A. *Iowa Code section 515A.3 (2011)*. Mr. Wood and Mr. DiDonato, on behalf of NCCI, both confirmed at hearing their understanding that these components are in fact required parts of the annual rate filing that NCCI submits, and further confirmed their understanding that the Commissioner maintains authority to disapprove any component of any such filing. *Testimony and argument of Roy Wood and Tony DiDonato*. NCCI confirmed this understanding again in their brief. *NCCI Reply Brief, p. 1-2*.

The Commissioner finds that NCCI's E-1402 filing will not diminish the Commissioner's regulatory authority.

2. **NCCI's Use of a Countrywide Inflation Index to Determine a Countrywide Split Point Does Not Violate Iowa Code section 515A.13**

IIAI argues that NCCI's E-1402 filing fails to meet the requirements of Iowa Code section 515A.13 (2011) by alleging that the statute specifically "prohibits the use of countrywide expense experience." *IIAI Brief, p. 1.*

Iowa Code section 515A.13 provides the following (emphasis added):

515A.13 Rate administration.

1. **The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with the commissioner, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid the commissioner in determining whether rating systems comply with the standards set forth in section 515A.3. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countywide expense experience. In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states.** No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it. The commissioner may designate one or more rating organizations or other agencies to assist in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

2. Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

3. In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers, and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.

4. The commissioner may make reasonable rules necessary to effect the purposes of **this chapter**.

5. A person other than the commissioner or the commissioner's designee shall not release to another person, other than to the servicing insurer of the policy or to the commissioner or the commissioner's designee, experience, payroll, loss data, expiration date of a policy, or classification information without the prior written approval of the policyholder. A violation of **this section** shall be considered an unfair trade practice pursuant to **chapter 507B**.

The purpose of section 515A.13 is to guide the Commissioner's administration of rates in this State. The statute provides that the Commissioner may promulgate rules to ensure the annual

collection of expense experience data specific to Iowa in order to assist the Commissioner in its determination as to whether rating systems comply with the standards set out in section 515A.3. *See Iowa Code section 515A.13 (2011)*. The statute goes on to provide that the Commissioner shall also give consideration to the rules and to the form of the plans used for rating systems in other states in order to assure that such rules and plans may be as uniform as is practicable among the several states. *See id.* Consideration of data from other states is not prohibited by this statute. *See id.* This is further evidenced by Iowa Code section 515A.3 which includes the requirement that the Commissioner give due consideration to past and prospective loss experience within and outside of this state...to past and prospective expenses both countrywide and those specifically applicable to this state; and to all other relevant factors within and outside this state. *NCCI Reply Brief, page 2.; Iowa Code section 515A.3 (2011)*.

NCCI provided testimony at hearing, as well as argument in its brief, that is helpful in response to IIAI's 515A.13 objection. Specifically, the current primary/excess split point of \$5,000 is a countrywide split point and it has been in place for twenty years. *NCCI Reply Brief, p. 3; Exhibit A, p. 5; Testimony of Mr. DiDonato*. NCCI's filing proposes indexing the split point for claim cost inflation to avoid having a greater proportion of losses fall into the excess category as time goes on. *Exhibit A, p.5*. This will work to increase the amount of information going into the formula and result in a more accurate and fair determination. *Exhibit A., p. 9-10; Testimony of Mr. DiDonato*. In fact, both parties expressed agreement at hearing that the countrywide split point needed to be changed. *Testimony of Mr. DiDonato, Mr. Wood, Mr. Krist, and Mr. Horbach*. It is the method of determining that change that is in dispute. *Id.* IIAI's insistence on use of an Iowa specific inflation index would simply result in an Iowa specific split point, and would fail to provide a solution for updating the current twenty year old countrywide split point. *NCCI Brief, p. 3*.

Additionally, the NCCI filing calls for Iowa data to be used for the experience rating values. *NCCI Brief, p. 4.; Testimony Mr. DiDonato*. The national index only determines the split point. *Id.* Pursuant to the filing at issue, the experience rating values used in Iowa will continue to be based on Iowa data and the claim history of each Iowa employer will continue to be compared to Iowa claim history benchmarks. *Id.*

The Commissioner finds that the NCCI's use of a countrywide inflation index to determine a countrywide split point does not violate Iowa Code section 515A.13.

3. Approval of NCCI's E-1402 Filing Will Not Unfairly Increase Premiums or Create an Adverse Impact Contrary to Law

Another argument posed by IIAI in opposition to the NCCI E-1402 filing is that it will unfairly increase Iowa premiums based upon other states' data. *IIAI Brief, p. 1.* IIAI alleges that the filing proposes a new formula that will not recognize Iowa's favorable climate by blending Iowa experience with that of less favorable jurisdictions. *IIAI Brief, p. 1.*

As stated above, the NCCI filing calls for Iowa data to be used for the experience rating values. *NCCI Brief, p. 4.; Testimony Mr. DiDonato.* The national index only determines the split point. *Id.* Pursuant to the filing at issue, the experience rating values used in Iowa will continue to be based on Iowa data and the claim history of each Iowa employer will continue to be compared to Iowa claim history benchmarks. *Id.*

NCCI has presented evidence illustrating potential changes to some Iowa employers' experience modification. *Exhibit A, p. 11-14; NCCI Reply Brief, p. 5.* This evidence reflects that the proposed filing will actually work to improve the accuracy and fairness of rates for employers in Iowa by assuring that employers with above average experience will not have premiums that are excessive, while premiums for employers with worse than average experience will not become inadequate. *Id.; Testimony Mr. DiDonato.*

The Commissioner finds that the approval of NCCI's E-1402 filing will not unfairly increase premiums or create an adverse impact contrary to law.

4. Request for Additional Education Requirements is Beyond the Scope of Issue Before the Commissioner

IIAI included within their brief requests that the Commissioner impose new education related requirements on all carriers as well as NCCI. *IIAI Brief, p. 2*. This request is not an objection to NCCI's E-1402 filing and is therefore beyond the scope of the matter at issue.

V. CONCLUSIONS OF LAW

The legislature has vested discretion in the Commissioner to interpret and apply the law. Iowa Code section 515A.5 authorizes the Commissioner to disapprove rate filings that do not meet the requirements of Chapter 515A.

After a careful review of all evidence submitted, the Commissioner concludes that the NCCI has met its burden, pursuant to Iowa Code section 515A.6(7)(d), and has proven by a preponderance of the evidence that its filing meets the requirements of Chapter 515A. NCCI's E-1402 filing should be approved.

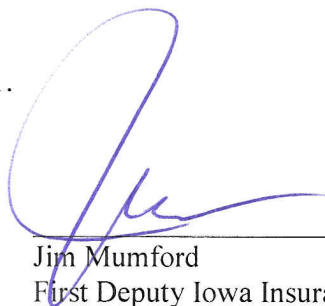
ORDER

IT IS THEREFORE ORDERED that:

NCCI's E-1402 filing, dated August 2, 2011, is approved as submitted. NCCI's pending Motion to Strike the IIAI's reply brief is hereby moot.

This Order shall be considered final agency action for the purposes of Iowa Code chapter 17A (2011). Any action challenging the Order shall comply with the requirements of Iowa Code chapter 17A (2011).

DATED this 27th day of December, 2011.



Jim Mumford
First Deputy Iowa Insurance Commissioner

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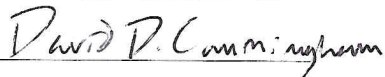
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CERTIFICATE OF SERVICE

I certify under penalty of perjury and pursuant to the laws of Iowa that copies of the foregoing instrument(s) were served to the names and addresses of the parties by the methods listed, with proper posted affixed thereto as required on this 27th day of December, 2011.



David Cunningham

