Report on Mobile Food Vending Operations

Excerpt from the WCIRB Classification and Rating Committee Minutes
March 18, 2014

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Executive Summary

Objective
The WCIRB reviewed the operations of mobile food truck operators to determine if a new classification should be established for the industry. Mobile food truck operations are currently assigned either to Classification 9079(1), Restaurants or Taverns, or to 8017(1), Stores – retail – N.O.C. depending on whether or not they engage in the preparation and sale of hot food. During the course of the study, the WCIRB broadened the scope to include a review of the operations of other types of mobile food vendors.

Findings
Based upon a review of the mobile food vending industry, the WCIRB finds that:

1. Mobile food vendors, like restaurants at fixed locations, are engaged in the preparation and serving of hot and cold foods to patrons. Mobile food vendors selling hot food compete with restaurants and produce a similar product.

2. There are mobile food vendors that prepare and sell food that is not hot food, such as vendors that sell ice cream, sandwiches, beverages, or other cold food items.

3. Mobile food vendors do not constitute a separate and distinct industry for which a new classification should be established.

4. Clarifying changes to Classification 9079(1) and the Special Industry Classification Procedures for Stores would promote the proper classification of the mobile food vending industry.

Recommendations
The WCIRB recommends the following:

1. Continue to assign mobile food vending to the appropriate classification based on the operations performed;

2. Amend the California Workers’ Compensation Uniform Statistical Reporting Plan—1995 effective January 1, 2015 to:

   a. Amend Classification 9079(1) to: (1) direct how mobile food vendors are to be classified, (2) remove the restriction that prevents division of payroll between Classification 9079(1) and any other classification as 9079(1) is assignable in connection with many other types of operations, and (3) to direct how related operations are classified; and

   b. Amend Part 3, Standard Classification System, Section IV, Special Industry Classification Procedures, Rule 6, Stores, Subrule f, for consistency with proposed changes to Classification 9079(1).
**Introduction**

The WCIRB reviewed the operations and classification experience of mobile food truck operators to determine if a new classification should be established for the industry. To establish a unique classification for a group of employers, the following conditions must exist:

- The operations performed by members of the group are unique and identifiable from the operations described by an existing classification.
- The operations performed by members of the group are relatively homogenous.
- The payroll and loss data developed by the group is statistically credible.

During the course of its review, the WCIRB expanded its study to consider other types of mobile food vendors.

**Classification History**

A 1983 study of the mobile food truck industry determined that a unique classification could not be established due to the small size of the industry. An entry was established in the *Advisory Rulings and Interpretations* companion to the *California Workers’ Compensation Uniform Statistical Reporting Plan—1995* (USRP) that provided guidance for classifying mobile food truck operators. The entry provided that:

1. The retail selling of packaged and prepared foods and sundry items by mobile catering service firms are classified as 8017;
2. The storage of packaged and prepared foods and sundry items, the preparation of cold sandwiches, and the loading of trucks which are owned and operated by the mobile catering service with such merchandise, are classified as 8017;
3. Storage, loading, and sale of packaged and prepared foods and sundry items to mobile catering services which operate their own trucks (separate concerns) are classified as 8018, *Stores – wholesale*; and
4. Mobile food truck operators that prepare hot foods are classified as 9079(1).

Effective January 1, 2014, Section IV, Subrule f was added to direct that firms that operate mobile food trucks for the retail selling of packaged and cold foods be classified as 8017(1), *Stores – retail*, and that the operation of mobile food trucks wherein hot food is prepared for sale to customers be classified as 9079(1), *Restaurants or Taverns – all employees*.

**Description of Operations**

**Industrial Food Trucks**

Industrial catering truck operators sell food items such as sandwiches, tacos, hamburgers and hot dogs during lunch and break times at construction sites, factories and other industrial locations. The trucks are typically outfitted with equipment such as griddles, deep fryers, steam tables, warming ovens, gas burners and refrigerators. Employees load trucks at the start of each shift, travel to operating locations, receive orders from customers, prepare food items and receive payment. Some industrial catering trucks operate at multiple locations each day.

Some industrial catering companies operate as wholesale distributors of food items to be sold from food trucks that are leased by the company to the operators or food trucks that are independently owned by the operator. In many cases, the operators of leased trucks are considered to be independent contractors, although some industrial catering companies that distribute items via food trucks provide workers’ compensation coverage for the truck operators.

**Specialty Food Trucks**

In recent years, the popularity of gourmet food trucks has grown significantly. Unlike industrial catering trucks, operators of gourmet food trucks establish a unique brand, name and menu. These operators sell food items in downtown areas, business parks, and at various public events and festivals. These
employers often use social media to notify clients of their location, which may vary daily. These employers tend to acquire their food products independently and are not common users of industrial catering wholesale distributors as described above. However, like the mobile industrial catering trucks, specialty food trucks are outfitted with kitchen equipment such as griddles, deep fryers, steam tables, warming ovens, gas burners and refrigerators. Specialty food truck employees load trucks at the start of each shift, travel to operating locations, receive orders from customers, prepare food items and receive payment.

**Mobile Food Booths/Trailers**
Mobile food booth vendors may be set up on a public street or at a fair, festival, concert venue or outside a large retail store. Similar to mobile food trucks, these vendors set up in places with a large population of possible customers. Booths, kiosks or trailers are generally transported from location to location on a truck or trailer. Employees obtain and transport food and supplies at the start of each shift, travel to operating locations and set up equipment and displays, receive orders from customers, prepare food and beverages and sell prepared items to customers.

Similar to a restaurant at a fixed location, mobile food vendors obtain food and serving products, take customers’ orders, perform monetary transactions, prepare food and drink products to order, and serve customers. Further, restaurants that operate from fixed locations may also operate a mobile food vending location or perform delivery services.

While the WCIRB did not identify coverage for any mobile food vendors that were classified as 8078(1), *Sandwich Shops – not restaurants*, 8078(2), *Beverage Preparation Shops*, or 8078(3), *Ice Cream or Frozen Yogurt Shops*, it is noted that these classifications describe the operations of some mobile food vendors, i.e., some only sell beverages or ice cream.

The WCIRB contacted the California Restaurant Association (CalRest) to obtain input concerning the food service industry. CalRest advised that its membership includes mobile food vendors and that its membership agrees with the current classification procedure for mobile food vendors.

The WCIRB attempted to contact mobile food truck associations via telephone and email several times to no avail.

**Classification Analysis**
As described above, mobile food vendors sell hot and cold food items at public venues and industrial sites by using mobile food trucks, trailers, carts and booths. Mobile food vendors typically operate at various public and industrial sites on a temporary or intermittent basis. Since mobile food vendors prepare and serve hot and cold foods, they compete with restaurants. Additionally, restaurants may perform mobile deliveries, and/or operate a mobile food truck or cart.

Mobile food vendors are similar in operation to other companies assignable to Classification 9079(1), 8017(1), or other appropriate food and beverage sales classifications, based on the type of operation they perform. In view of the above, the mobile food industry is not a distinct and clearly identifiable industry for which a unique classification can be established.

**Other Jurisdictions**
The WCIRB contacted the National Council on Compensation Insurance, Inc. (NCCI), and the New York Compensation Insurance Rating Board (NYCIRB) to determine how mobile food vendors are classified in other jurisdictions. In NCCI states and New York, separate classifications exist for fast food restaurants (no wait staff), full service restaurants (employ wait staff), and establishments whose revenue is primarily
(over 50%) from alcoholic beverage sales. Mobile food vendors are assigned to the fast food restaurant classification. In NCCI states, food truck drivers are separately classified as 7380, Drivers, Chauffeurs, and Their Helpers NOC--Commercial.

In contrast, all restaurant operations in California, including mobile hot food vendors, are classified as 9079(1), Restaurants or Taverns.

Payroll and Loss Data
By reviewing inspection reports and internet websites, staff identified current coverage for 68 mobile food vendors. Sixty-seven are assigned to Classification 9079(1) and one is assigned to Classification 8017(1). While the mobile food industry is not a distinct and clearly identifiable industry, for informational purposes, Table 1 shows the Classification Relativity data at policy year 2014 level for the mobile food vendors that staff was able to identify.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Reports (USRs)</th>
<th>Payroll</th>
<th>Losses</th>
<th>Loss to Payroll Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>13</td>
<td>9,218,461</td>
<td>1,863,503</td>
<td>20.215</td>
</tr>
<tr>
<td>2007</td>
<td>11</td>
<td>7,988,102</td>
<td>1,285,615</td>
<td>16.094</td>
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<td>2008</td>
<td>11</td>
<td>7,078,416</td>
<td>731,998</td>
<td>10.341</td>
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<tr>
<td>2009</td>
<td>13</td>
<td>6,484,172</td>
<td>735,211</td>
<td>11.339</td>
</tr>
<tr>
<td>2010</td>
<td>20&lt;sup&gt;2&lt;/sup&gt;</td>
<td>6,909,705</td>
<td>229,562</td>
<td>3.322</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>37,678,856</td>
<td>4,845,888</td>
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</tr>
</tbody>
</table>

Indicated (Unlimited) Loss to Payroll Ratio: 7.480
Selected Loss to Payroll Ratio (Restricted to 25% Change): 4.319

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<sup>1</sup> In NCCI states, restaurants are classified as 9083, Restaurant–fast food, 9082, Restaurant NOC, and 9084, Bar, Discoteque, Lounge, Nightclub or Tavern. In New York, restaurants are classified as 9071 “Restaurant–Full-Service–including entertainers and/or musicians”, 9072 “Restaurant–Fast Food & Drivers”, and 9074 “Bar, Dance Club, Lounge, Nightclub or Tavern–including entertainers and/or musicians.”

<sup>2</sup> As noted above, the WCIRB identified current coverage for 68 mobile food vending employers. Of this group, 45 employers recently secured coverage for the first time and payroll and loss data has not been received.
As shown in Table 1, the payroll and loss experience for the mobile food vending industry develops low statistical credibility factors and year to year payrolls show a decline.

For informational purposes Tables 2 and 3 present the Classification Relativity data at policy year 2014 level for Classifications 9079 and 8017.

### Table 2: Classification 9079
Classification Relativity Data at Policy Year 2014 Level

<table>
<thead>
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<th>Year</th>
<th>Payroll</th>
<th>Losses</th>
<th>Loss to Payroll Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>13,057,232,883</td>
<td>394,544,693</td>
<td>3.022</td>
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<td>2010</td>
<td>13,318,431,831</td>
<td>403,353,363</td>
<td>3.029</td>
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<tr>
<td>Total</td>
<td>26,375,664,714</td>
<td>797,898,056</td>
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</tbody>
</table>

Selected (Unlimited) Loss to Payroll Ratio: 3.804

### Table 3: Classification 8017
Classification Relativity Data at Policy Year 2014 Level

<table>
<thead>
<tr>
<th>Year</th>
<th>Payroll</th>
<th>Losses</th>
<th>Loss to Payroll Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>9,800,785,481</td>
<td>280,355,035</td>
<td>2.861</td>
</tr>
<tr>
<td>2010</td>
<td>9,849,630,313</td>
<td>273,989,888</td>
<td>2.782</td>
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<tr>
<td>Total</td>
<td>19,650,415,794</td>
<td>554,344,922</td>
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</table>

Selected (Unlimited) Loss to Payroll Ratio: 3.532

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3 The relativity, or "Selected (Unlimited) Loss to Payroll Ratio", for each classification in the upcoming policy year is determined based on a weighted average of that classification's actual losses per $100 of payroll and the ratio of losses per $100 of payroll underlying the current pure premium rate, using credibilities as weights. The "credibilities" assigned to a classification are the statistical weights assigned to that classification’s experience as a predictor of future claim experience relative to the loss per $100 of payroll underlying the classification’s current pure premium rate. The predictability or credibilities assigned to a classification’s recent historical experience depends on the volume of indemnity and medical claims incurred during the experience period. The WCIRB strives to have classifications that are fully, or 100%, statistically credible based on historical experience over five or fewer years, which means that the classification’s relativity in the upcoming policy year can be best estimated using only the loss per $100 of payroll experience from the latest two-, three-, four- or five-year periods. The WCIRB generally will not recommend the establishment of a new classification if the credibility factors are less than one-half (< 0.50).
Conclusion
The mobile food vending industry is not a separate and distinct industry and therefore, a new classification should not be established.

Recommendations

1. Continue to assign mobile food vending to the appropriate classification based on the operations performed.

2. Amend the USRP effective January 1, 2015 to:
   a. Amend Classification 9079(1) to: (1) direct how mobile food vendors are to be classified, (2) remove the restriction that prevents division of payroll between Classification 9079(1) and any other classification as 9079(1) is assignable in connection with many other types of operations, and (3) to direct how related operations are classified; and
   b. Amend Part 3, Standard Classification System, Section IV, Special Industry Classification Procedures, Rule 6, Stores, Subrule f, for consistency with proposed changes to Classification 9079(1).
Recommendation
Amend Part 3, Section IV, Rule 6, Stores, Subrule f, for consistency with proposed changes to Classification 9079(1), Restaurants or Taverns.

PROPOSED

Section IV – Special Industry Classification Procedures

6. Stores

f. Firms that operate engage in mobile food trucks vending for the retail selling of packaged and cold foods and beverages from food trucks, trailers, carts or temporary booths, including the incidental storage of such merchandise, shall be classified as 8017(1), Stores – retail, 8078(1), Sandwich Shops, 8078(2), Beverage Preparation Shops, or 8078(3), Ice Cream or Frozen Yogurt Shops, depending on the products sold. The operation of mobile food trucks, trailers, carts or temporary booths wherein hot food is prepared for sale to customers shall be classified as 9079(1), Restaurants or Taverns.

Recommendation
Amend Classification 9079(1), Restaurants or Taverns, to (1) remove the broad no payroll division restriction; (2) clarify the scope of this classification; and (3) direct how related operations shall be classified.

PROPOSED

RESTAURANTS OR TAVERNS — all employees — including musicians and entertainers 9079(1)

This classification shall not be used for division of payroll in connection with any other classification (other than the Standard Exceptions or General Exclusions) unless the operations described by Classification 9079(1) constitute a separate and distinct enterprise having no connection with the operations covered by any other applicable classification.

This classification contemplates the preparation and serving of hot and cold food items for consumption on or away from the premises or the preparation, pouring and serving of alcoholic beverages for consumption on the premises. This classification also applies to the operation of mobile food trucks vending operations involving the use of food trucks, trailers, carts or temporary booths wherein hot food is prepared for sale to customers. Mobile food vending operations that do not include the preparation of hot food shall be classified as 8017(1), Stores – retail, 8078(1), Sandwich Shops, 8078(2), Beverage Preparation Shops, or 8078(3), Ice Cream or Frozen Yogurt Shops, depending on the products sold.

Hot foods items are foods that are cooked to order for customers and served hot. Foods that are prepared and served from a warming tray or similar device are also considered hot foods.