To the Members of the Board

Re: New York Workers Compensation
Vehicles Under Contract – Rule Amendment

The Rates Committee has adopted, and the New York State Insurance Department has approved, effective October 1, 1999 for new and renewal business, an amendment to clarify the intent of Rule IV.B.2.c – Vehicles Under Contract.

Persons engaged in operations subject to this rule are considered subcontractors, therefore, the general contractor can be held liable for workers compensation benefits if the subcontractor fails to provide such insurance to its employees. The entire payroll of drivers, chauffeurs and helpers, provided with vehicles under contract, is included with the insured's payroll if no evidence is available that workers compensation insurance has been provided for these workers. If payrolls are not attainable, then one-third (1/3) of the contract price will be used as the basis for premium.

The current Vehicle Under Contract rule in New York stipulates that "if the owner of a vehicle under contract also is a driver and is entitled to workers compensation benefits and has not furnished evidence that such workers compensation obligation has been insured, of the contract price for that vehicle shall be included as payroll of the insured employer which contracted for the vehicle." The rule has, therefore, been amended to further clarify its intent by stipulating that the insured employer may be liable for workers compensation insurance for the owner/driver of a vehicle under contract. In addition, since this rule is intended to apply to subcontractors, it has been removed from the Standard Exception Classifications section of the New York Workers Compensation and Employers Liability Manual and placed under Rule IX.C.3.c. which pertains to subcontractors.

Revised manual phraseologies, with regard to this change are attached to this bulletin. Printed manual pages will be distributed at a later date following their availability.
Reserved for future use
A. GENERAL EXPLANATION

The object of the classification system is to group employers into classifications so that the rate for each classification reflects the exposures common to those employers. Subject to certain exceptions described later in this rule, it is the business of the employer within a state that is classified, not the separate employments, occupations or operations within the business.

B. EXPLANATION OF CLASSIFICATIONS

1. Basic Classifications. All classifications in the Manual are basic classifications, other than the standard exception classifications. Basic classifications describe the business of an employer, such as:

<table>
<thead>
<tr>
<th>Business</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacture of a Product</td>
<td>Furniture Mfg.</td>
</tr>
<tr>
<td>A Process</td>
<td>Engraving</td>
</tr>
<tr>
<td>Construction or Erection</td>
<td>Carpentry</td>
</tr>
<tr>
<td>A General Type or Character of Business</td>
<td>Hardware Store</td>
</tr>
<tr>
<td>A Service</td>
<td>Beauty Parlor</td>
</tr>
</tbody>
</table>

Classifications are listed alphabetically in Part Two of this Manual. Notes following a classification are part of that classification.

Also see the Classifications Code Book for classifications by industrial schedules and groups.

2. Standard Exception Classifications. Some occupations are common to so many businesses that special classifications have been established for them. They are called standard exception classifications. Employees within the definition of a standard exception classification are not included in a basic classification unless the basic classification specifically includes those employees. The standard exception classifications are defined below:

   a. Clerical

      1) **Office Employees**—Code 8810—are employees whose duties include the creation or maintenance of financial or other records of the employer, the handling of correspondence, technical drafting, telephone work which includes sales by phone and any other duties of the employer provided:

         ✓ i) the office employee is not regularly or frequently exposed to an operative hazard of the business.
         ✓ ii) the office employee is not a stock or tally clerk whose work is necessary, incidental or part of any other operation of the business other than clerical office.
         ✓ iii) the employee is not a cashier in a store whose duties include the handling of merchandise or who is otherwise exposed to the store operation.
         ✓ iv) the employee is not an outside salesperson or representative.

      If the employee’s duties are described in ✓ i), ✓ ii), and ✓ iii) above, then the entire payroll of the employee is assigned to the highest rated classification of work to which the employee is exposed.

      2) **Telecommuter Employees**—Code 8871— are employees whose duties include the creation or maintenance of financial or other records of the employer, the handling of correspondence, technical drafting, telephone work which includes sales by phone and any other duties of the employer from their residence office provided:
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i) the office employee is not regularly or frequently exposed to an operative hazard of the business.

ii) the office employee is not a stock or tally clerk whose work is necessary, incidental or part of any other operation of the business other than clerical office.

iii) the employee is not a cashier in a store whose duties include the handling of merchandise or who is otherwise exposed to the store operation.

iv) the employee is not an executive officer, outside salesperson or representative.

If the employee’s duties are described in i, ii, or iii above, then the entire payroll of the employee is assigned to the highest rated classification of work to which the employee is exposed.

b. Drafting Employees—Code 8810—are employees engaged exclusively in drafting and confined to office work. The entire payroll of any such employees exposed to any other operations shall be assigned to the highest rated classification of operations to which they are exposed.

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Telecommuter Drafting Employees—Code 8871—are employees engaged exclusively in drafting from their residence office. The entire payroll of any such employees exposed to any other operations shall be assigned to the highest rated classification of operations to which they are exposed.

NOTE: A clerical office is a work area separated by floors, walls, partitions, or other physical barriers and is distinguishable from all other work areas and hazards of the employer.

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A residence office is a clerical work area located in the dwelling of the clerical telecommuter employee or telecommuter drafting employee. The dwelling of the employee must be separate and distinct from the location of the employer.

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Clerical telecommuter employees and telecommuter drafting employees must spend more than 50 percent of their time performing clerical or drafting functions at their residence office in order to qualify for Code 8871. If more than 50 percent of their time is spent performing clerical or drafting functions at the employer’s place of business, then Code 8810 would apply to the work they perform.

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c. Drivers, Chauffeurs and Their Helpers—Code 7380—are employees engaged principally (more than 50% of their time) in such duties on or in connection with a vehicle. This classification also includes garage employees, and employees using bicycles in their operations. Refer to Rule IX.C.3.c for Vehicles Under Contract.

Vehicles Under Contract. If vehicles with drivers, chauffeurs or helpers are engaged under contract and the owner of such vehicles has not furnished evidence that the workers compensation obligation has been insured, the total payroll of such drivers, chauffeurs or helpers shall be included as payroll of the insured employer which contracted for such vehicles. Such payroll shall be assigned to the classification applicable in that risk to drivers. If that payroll cannot be obtained, 1/3 of the total contract price for the vehicles shall be considered as payroll of the drivers, chauffeurs or helpers. If the owner of a vehicle under contract also is a driver and is entitled to workers compensation benefits and has not furnished evidence that such workers compensation obligation has been insured, 1/3 of the contract price for that vehicle shall be included as payroll of the insured employer which contracted for the vehicle.
d. Salespersons, Collectors or Messengers–Outside–Code 8742—are employees engaged in such duties away from the employer's premises. This classification shall not apply to employees who deliver merchandise. Employees who deliver merchandise by vehicle shall be classified as route salespersons or drivers. If they walk or use public transportation, they shall be assigned to the classification to which such delivery or merchandise is incidental.

e. Salespersons–Inside–Code 8742—are employees who sell exclusively from catalogs or samples in a salesroom or showroom and have no other duties except clerical work or outside sales. This classification does not include any salespersons who as a regular part of their duties handle or display the actual merchandise sold by the insured. If the actual merchandise is sold at the same location, the appropriate store or dealer classification applies. Refer to the Digest of Rulings and Interpretations for further explanation. Employees who sell or solicit exclusively by telephone are to be assigned to Code 8810 "Clerical Office Employees."

f. Route Salespersons–Code 8751—are employees who cover sales routes in vehicles, including private passenger automobiles, for the purpose of soliciting orders and as an incident to such selling activities also deliver all or part of the merchandise they themselves have sold. The classification shall also include route supervisors and incidental garage employees. The classification does not apply to any employee who delivers merchandise which has been sold on the premises of the employer or by any other employee than the one who makes the delivery. This classification shall not be assigned in connection with any Manual classification which specifically includes salespersons as well as drivers.

g. Executive Officers–NOC–Not Foremen, Workers or Salespersons–Code 8809—This classification is applicable to executive officers of a corporation, appointed in accordance with the charter or by-laws of such corporation, whose duties are of an executive, clerical or supervisory character. This classification shall not apply to any executive officer who regularly and frequently performs such duties as are ordinarily undertaken by a foreman, worker or salesperson.

3. General Inclusions.

a. Some operations appear to be separate businesses, but they are included within the scope of all classifications other than the standard exception classifications. These operations are called general inclusions and are:

(1) Cafeterias and restaurants for the insured's employees. Such operations shall be assigned to a separate classification if conducted in connection with construction, erection, lumbering or mining operations.

(2) Manufacture of containers such as bags, barrels, bottles, boxes, cans, cartons or packing cases by the employer for use in the operations insured by the policy.

(3) Hospitals or medical facilities operated by the insured for its employees.

(4) Maintenance or repair of the insured's building or equipment by the insured's employees.

(5) Printing or lithographing by the insured on its own products.

(6) Stevedoring and tallymen or checking clerks.

(7) Research laboratories operated by the insured to develop, test and/or improve products manufactured by the insured.

(8) Examining and/or inspecting products manufactured by the insured (quality control).

b. A general inclusion operation shall be separately classified only if:

(1) Such operation constitutes a separate and distinct business of the insured as provided in Rule IV-D below, or

(2) It is specifically excluded by the classification wording, or

(3) A standard exception classification is the governing classification.

Refer to Section II of the Digest of Rulings and Interpretations for further explanation.

4. General Exclusions. Some operations in a business are so unusual that they are excluded from basic classifications. They are classified separately unless specifically included in the basic classification wording. These operations are called general exclusions and are:

a. Aircraft operation—all operations of the flying and ground crews.

b. New construction or alterations by the insured's employees.
C. SUBCONTRACTORS

1. **Law on Contractors, Subcontractors and Owners of Timber.** The New York Workers Compensation Law provides that contractors shall be responsible for payment of benefits to employees of uninsured subcontractors. It further provides that owners of timber other than farm lands shall also be responsible for payment of benefits to employees of uninsured contractors or uninsured subcontractors.

2. **Coverage.** This statutory responsibility is automatically insured by the Standard Policy issued to the contractor or owner of timber.

3. **Premium for Uninsured Subcontractors.**
   a. The contractor shall furnish satisfactory evidence that the subcontractor had workers compensation insurance in force covering the work performed for the contractor. For each subcontractor for which such evidence is not furnished, the additional premium to be charged on the policy which insured the contractor shall be the premium computed by applying the appropriate classification rates to the entire payroll expended by the subcontractor for the subcontracted work. For the purpose of this rule, the appropriate classifications shall be those which would apply to the subcontractor's operations had only such operations been insured in a separate policy.

   b. The contractor shall provide a complete payroll record of the employees of each uninsured subcontractor for purposes of establishing the appropriate premium. If the contractor does not supply the payroll records of its subcontractor, premium shall be determined as follows:

      (1) 33 1/3% of the subcontract price shall be considered payroll if the subcontract is for mobile equipment with operators (such as but not limited to earth movers, graders, bulldozers or log skidders).

      (2) 50% of the subcontract price shall be considered payroll if the subcontract is for labor and material.

      (3) 90% of the subcontract price shall be considered payroll if the subcontract is for labor only.

   Exception to 3b above
   In any case where investigation of a specific job discloses that a definite amount of the subcontract price represents payroll, premium shall be based on that amount.

   c. **Vehicles Under Contract:** If vehicles with drivers, chauffeurs or helpers are engaged under contract and the owner of such vehicles has not furnished evidence that the workers compensation obligation has been insured, the total payroll of such drivers, chauffeurs or helpers shall be included as payroll of the insured employer which contracted for such vehicles. Such payroll shall be assigned to the classification applicable in that risk to drivers. If that payroll cannot be obtained, 1/3 of the total contract price for the vehicles shall be considered as payroll of the drivers, chauffeurs or helpers.

   If the owner of a vehicle under contract also is a driver who may be entitled to workers compensation benefits and has not furnished evidence that such workers compensation obligation has been insured, 1/3 of the contract price for that vehicle shall be included as payroll of the insured employer which contracted for the vehicle.

   The total contract price shall include the cost of fuel, maintenance, or other services provided to the owner or owner-operator of a vehicle under contract.

   d. If an experience modification has been established for the contractor, such experience modification shall be applied to the premium developed for the uninsured subcontractor.

   e. The above premium determination procedures shall also be applicable in the case of uninsured contractors or subcontractors engaged by owners of timber other than farm lands.
4. **Piece Work, Drivers, Chauffeurs and Helpers Under Contract.** This rule on subcontractors does not apply to contracts for piece work, nor to drivers, chauffeurs or helpers on vehicles engaged under contract:

   a. The entire amount paid to piece workers shall be the payroll, as provided in Rule V.

   b. The rules on standard exceptions in Rule IV apply to drivers, chauffeurs or helpers on contract vehicles.

D. **AUXILIARY POLICE**

1. **Law and Status.** Members of an auxiliary police organization authorized by local law may be covered under a policy if a municipal corporation, pursuant to local law, elects to cover such individuals.

2. **Coverage.** Upon election coverage may be effected by attaching the New York Inclusion of Auxiliary Police Endorsement (WC 31 03 14).

3. **Premium Determination.** Premium shall be determined on the basis of the reasonable value of services provided by auxiliary policemen and assigned to Code 7720.

E. **EXCLUSION OF STATUTORY MEDICAL BENEFITS—EX-MEDICAL COVERAGE**

1. **Explanation.** It is permissible to issue a Standard Policy with the provision that the insured will pay for all medical and hospital services required by law, provided that the employer is operating a properly equipped hospital or medical facility which is authorized or licensed by the New York Workers' Compensation Board, 180 LIVINGSTON STREET, BROOKLYN, NEW YORK 11248. Attach the New York Medical Reimbursement Endorsement (WC 31 03 10) to such a policy, and also file a copy showing the name of insured and location with the New York Workers' Compensation Board.

   **NOTE:** This coverage may not be written in conjunction with any deductible program which pertains to medical coverage with the exception of the Excess Medical Coverage Program described in Rule IX-F.

2. **Approval Required.** A carrier which intends to issue ex-medical coverage shall submit an application to the Rating Board advising us of the authorization by the Workers Compensation Board for the furnishing of medical and hospital services by the insured. If the insured is a hospital, approval is not required.

3. **Rates and Premium.** For any location insured on an ex-medical basis, use the ex-medical rates to compute premium for the applicable classifications. Ex-medical rates are printed on the rate pages for the hospital classifications. For other classifications, obtain ex-medical rates from the Rating Board.

F. **EXCESS COVERAGE FOR MEDICAL PAYMENTS UNDER EX-MEDICAL POLICIES**

On any policy which provides that the employer shall comply with the statutory obligations for medical aid with respect to operations at or from a specified location, coverage for excess medical losses incurred in connection with such operations may be provided in accordance with the following rules:

1. **Coverage.** The coverage shall provide indemnification to the employer for the amount by which the medical payments actually made by him on any claim exceeds $2,000 or $5,000 or on any accident which exceeds $5,000, $10,000, $15,000 or $25,000.

2. **Form of Endorsement.** Excess medical coverage shall be provided by attaching to the ex-medical policy the authorized New York Excess Medical Coverage Endorsement (WC 31 03 03). A separate premium charge shall be made for this coverage.

3. **Rates.** The rate per $100 of payroll or other unit of exposure for each classification shall be calculated by multiplying the appropriate statutory medical coverage authorized rate by the excess medical factor for such classification, and shall be carried out to three decimal places. Such excess medical factor shall be obtained from the Board in each case.
4. **Premium.** The premium shall be determined separately from all other premium under the policy by the application of the appropriate excess medical coverage rate to the payroll or other exposure basis for each classification. The premium developed under the New York Excess Medical Coverage Endorsement (WC 31 03 03) shall not be subject to the premium discount provisions of this Manual, nor shall any experience developed under such endorsement be used in the experience rating of the risk or be included in any retrospective rating agreement which may otherwise be applicable to the policy.

G. **EXCLUSION OR MODIFICATION OF OTHER COVERAGES BY ENDORSEMENT**

1. **New York Executive Officers Exclusion Endorsement (WC 31 03 04), and New York Executive Officers Hold Harmless Endorsement (WC 31 06 03).** If an insured has more than one carrier separately insuring their multiple corporations or locations, the use of these endorsements will permit a single premium charge to be made for each insured executive officer.

   The New York Executive Officer Exclusion Endorsement (WC 31 03 04) should be used by the carrier not providing coverage to specified executive officers, when the carrier who is insuring the executive officers has attached the New York Executive Officer Hold Harmless Endorsement (WC 31 06 03) as part of its policy.

2. **New York Exclusion for Designated Officers and Employees of Fire Districts Endorsement (WC 31 0602).**

3. **New York Non-Subject Employees Exclusion Endorsement (WC 31 03 11).**

4. **New York Liability of Municipalities to Police Officers or Paid Firefighters—Exclusion Endorsement (WC 31 03 07).**

5. **New York Exclusion for Designated Officers and Employees of Ambulance Districts Endorsement (WC 31 06 11).**

6. **New York Ambulance and Fire District Liability Exclusion Endorsement for County or Town Policies (WC 31 06 12).**
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