To the Members of the Board

Re: New York Workers Compensation
Manual Rules for the Implementation of the
Construction Employment Payroll Limitation Law

The Rates Committee has adopted, and the New York State Insurance Department has approved, rules for inclusion in the New York Workers Compensation and Employers Liability Manual for the implementation of the Construction Employment Payroll Limitation Law.

On June 30, 1998, Governor George Pataki enacted the Construction Employment Payroll Limitation Law (Chapter 135 of the Laws of 1998) which is intended to provide a more equitable distribution of premium between high wage paying and low wage paying employers in the construction industry. The Law becomes effective for construction employers who have a workers compensation insurance anniversary rating date on or after October 1, 1999. Work performed in the construction, remodeling, maintenance or repair of one or two family residential housing is excluded from the provisions contained in the Law. The legislation also creates three geographic rating territories that will be used in calculating premiums for employers subject to the new law. A summary of the key provisions of the law is attached for your reference.

To assist in your understanding of the various rules that have been established for the implementation of this legislation, an explanatory memorandum describing the purpose and intent of each rule addition or revision is included with this bulletin.

Each of the affected rules in the New York Workers Compensation and Employers Liability Manual is also attached.

The Board intends to publish more detailed information, in a question and answer format, in a subsequent bulletin. These questions and answers will also be included in the Digest of Rulings and Interpretations section of the New York manual.

Printed manual pages will be distributed as soon as they are available.
New York Workers Compensation
Construction Employment Payroll Limitation Law

Key Provisions

• Construction classifications

• Excludes any employments engaged in the construction of 1 or 2 family residential housing

• Payroll Limitation - transitional over 4 years:
  - 10/1/99: $900 per week plus one-half of the difference between the total payroll and the limited payroll
  - 10/1/00: $900 per week
  - 10/1/01: $800 per week
  - 10/1/02: greater of $750 per week or the weekly payroll amount upon which the maximum workers compensation benefit is based

• Actual weekly payroll per employee used for limitation purposes

• Average weekly payroll per employee to be used only for classes where such use is deemed appropriate by a committee established by this statute

• Rates for affected classifications to be adjusted, beginning 10/1/99, to reflect payroll limitations separately for each of 3 geographic territories (territory differentials)

• Territory 1 - Counties of The Bronx, Kings, New York, Queens and Richmond
  Territory 2 - Counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Westchester
  Territory 3 - All other counties

• Premiums for affected employers shall be established on the basis of payroll and a formula which provides credits on the limited payroll basis (continuation of the New York Construction Classification Premium Adjustment Program)

• All affected employers must keep true and accurate records of number of employees, wages paid and number of hours-worked; records to be available for audit; penalties for failure to maintain required records

• Detailed employer records of wages, hours-worked and other information by job location to be submitted quarterly to Department of Taxation

• Tax Law amended to authorize Commissioner of Taxation to enter into agreements with carriers to verify employer records reported to the Department; confidentiality protections included

• Equity Task Force established to evaluate premium basis for workers compensation insurance in the construction industry; chaired by Executive Director of the State Insurance Fund; includes representatives from construction contractors, insurance industry, building trades, Department of Labor and Insurance Department; services of rate service organization or actuarial consulting firm permitted

• Committee established to determine ways to implement audits of employers’ payroll records, including effects of average versus actual weekly payrolls; chaired by Superintendent of Insurance; includes representatives from organized labor, affected contractors, insurance industry, NYCIRB, and the State Insurance Fund
The following rules have been developed for inclusion in the New York Workers Compensation and Employers Liability Manual for the implementation of the Construction Employment Payroll Limitation Law (Chapter 135 of the Laws of 1998):

Rule IV B.5. - Governing Classification

This rule is amended to provide that, in determining the governing classification, limited payroll is to be used for construction employers subject to payroll limitation.

Rule IV E.1. - Miscellaneous Employees

This rule is amended to provide that, in assigning payrolls of miscellaneous employees, limited payroll is to be used for construction employers subject to payroll limitation.

Rule V A. - Basis of Premium - Total Remuneration

This rule is amended to state that certain construction classifications, due to payroll limitation, will also have a premium basis that is other than total remuneration.

Rule V F. - Payroll Limitation - Other Than Construction Classifications Contained in Rule V G.

This rule is being retitled to specify that its provisions apply to construction classification other than those contained in new Rule V G.

Rule V G. - Payroll Limitation

This is a new rule which sets forth, in detail, the eligibility, definitions and other information regarding the application of payroll limitation. Specifically:

G.1. - To Whom Payroll Limitation Applies

This section sets forth the eligibility for employers with respect to industry classification assignments. These classification codes, with the exception of code 5651, which applies to the construction of residential housing, are those currently contained in the New York Construction Classification Premium Adjustment Program (PAP).

The definition of the term “construction” is also included in this section and is specified to include new construction, as well as the remodeling, repair and maintenance work on existing structures.

This section also specifies that, in accordance with the legislation, employments involved in the construction of one or two family residential housing are excluded from payroll limitation. The rule also provides a brief example which illustrates that, within any of the eligible classes, an employer could have payroll both subject and not subject to payroll limitation.

G.2. - When Payroll Limitation Applies
This is a copy of the existing rule regarding extra pay for overtime and is repeated here for consistency and completeness.

G.3. - How Payroll Limitation Applies

This section sets forth the legislated maximum weekly employee payroll amounts to be used for premium determination purposes. Separate maximums are provided for four time periods, beginning on October 1, 1999, and are applicable to policies with rating anniversary dates effective on the specified dates.

Six “Notes” are contained in this section and provide further details regarding the application of payroll limitation as follows:

Note 1 - This note specifies that actual weekly payroll, in lieu of the customary usage of average payrolls, is to be used for payroll limitation purposes. It is further stated that any payroll earned from residential construction must be excluded from an employee’s weekly payroll prior to payroll limitation.

Note 2 - Since it is imperative that an employer segregate residential from commercial payroll, the benefits of payroll limitation should not be gleaned by an employer who fails to keep the necessary separate records. Since, without proper payroll records, a carrier will be unable to ascertain the payroll for limitation purposes, no limitation will be applied to that employer’s payroll.

Note 3 - Consistent with the use of weekly payroll for limitation purposes, and as a practical matter, an employee’s entire weekly payroll will be assigned to the territory in which the majority of his/her week’s work was performed.

Note 4 - Similar to Note 2 above, an employer who fails to keep detailed records by territory should not be receiving unjustified benefits from the payroll limitation. Consequently, if an employer performs work in more than one territory, but is unable to furnish the appropriate records, all payroll will be assigned to the territory with the next highest premium differential to that of the employer’s home base of operations. An exception also provides that, if it can be determined that work was performed in the territory with the highest differential, then all payroll will be assigned to that territory.

Note 5 - This note addresses the situation in which out-of-state work is performed and the payroll is still considered to be New York exposure. In these cases, the payroll will be assigned to the territory of the home office or the New York base of operations of the employer.

Note 6 - In recognition that, despite the intended clarity of the rules, there will be many questions from carriers, employers, agents and others regarding the rules’ application, a separate section in the manual’s Digest of Rulings and Interpretations will be established in which these questions and appropriate answers will be contained. This section will be published in a separate bulletin at a later date.

G.4. - Partial Week

This section repeats the comparable general rule for the handling of partial week payroll and is contained here for consistency and completeness.

Rule VI G.3. - Audit of Payroll and Adjustment of Premium
This rule was established to inform the carriers that, as stated in the legislation, an agreement may be entered with the New York State Department of Taxation for the purpose of verifying an employer’s payroll records. The Department of Taxation should be contacted for specifics regarding this aspect of the legislation.

Rule VI I. - Premium Determination For Construction Employments Subject to Rule V G.

This rule sets forth the actual premium calculation procedures for the construction classes that are eligible for payroll limitation. The methodology encompasses the application of payroll (limited for commercial construction; unlimited for one or two family residential construction) multiplied by the class manual rate to determine a base premium. The limited payrolls are then segregated by territory and the territory payrolls are multiplied by the manual rate by class and the appropriate territory differential(s) to determine the territory differential premium(s). The sum of the manual base premium and the territory differential premium(s) then become the premium subject to experience rating and other pricing factors.

Several items should be noted regarding this procedure: a) the territory differential premiums are identified by statistical codes that are unique to each of the three territories; b) the territory differentials will be shown in the Miscellaneous Values section of the rate pages. These differentials will be included with the publication of the October 1, 1999 rates.

Rule VI J. - Premium Determination for Federal and Maritime Insurance
K. - Safety Programs - Surcharges and Credits

There is no change to the text of these rules. They are merely being renumbered due to the addition of the previously described Rule VI I.

Rule IX A.6.a.2. - Executive Officers

This rule is being expanded to indicate that there is a separate rule for construction classifications subject to Rule V G.

Rule IX A.6.a.7. - Executive Officers

This new section specifies that the customary maximum payrolls for executive officers do not apply to officers subject to construction classifications when payroll limitation applies. An exception is included for the initial year under payroll limitation to ensure that no more than the customary maximum payroll will apply if, in fact, the payroll limitation produces a higher payroll than the customary maximum.

Rule IX B.4. - Sole Proprietors and Partners

This rule is being changed to indicate that the customary maximum payrolls for sole proprietors and partners do not apply to sole proprietors and partners subject to construction classifications when payroll limitation applies. An exception is included for the initial year under payroll limitation to ensure that no more than the customary maximum payroll will apply if, in fact, the payroll limitation produces a higher payroll than the customary maximum.

Rule IX C.3.C. - Premium for Uninsured Subcontractors
This new paragraph specifies that payroll limitation and territory differentials will apply when payroll is used to determine premium. If the contract price is used in lieu of actual payroll, the resultant premium will be subject to territory differentials in accordance with Rule V.I.

**Rule IX.I.3.a.,b.,c. - Construction Classification Premium Adjustment Program**

This rule has been amended to state that unlimited payroll will continue to be used as the basis for PAP credits until such time as limited payroll is available for use on the PAP applications (beginning with policies effective April 1, 2001). The rule also clarifies that unlimited payroll will continue to be used for employees engaged in the construction of one or two family residential housing.

**Rule XII D.4. - Rates For Non-Federal “Non-F” Construction Classifications**

A new section is being added to the USL&HW rule. This new paragraph specifies that, for territory differential purposes, construction work, subject to payroll limitation in conjunction with USL&HW exposure, will be assigned to the territory immediately adjoining the waters upon which the work was performed.

**Miscellaneous Values Page**

This manual page has been updated to display a listing of the counties comprising each construction territory and the premium differential applicable to each territory. References to the previously described payroll limitation procedure for executive officers and sole proprietors and partners have also been added to this page.

**Endorsement WC 31 03 19A**

The New York Construction Classification Premium Adjustment Program Explanatory Endorsement has been amended to incorporate the use of limited and unlimited payrolls as specified in Rule IX.I.3.a.,b.,c.
c. Sawmill operations—sawing logs into lumber by equipment such as circular carriage or band carriage saws, including operations incidental to the sawmill.

i 5. Governing Classification. The governing classification at a specific job or location is the classification, other than a standard exception classification, that produces the greatest amount of payroll. In instances where no basic classification is applicable, the governing classification is the standard exception classification that produces the greatest amount of payroll. For employers subject to payroll limitation, Rule V.G., limited payroll shall be used.

C. CLASSIFICATION WORDING

1. Captions. Captions which precede related classifications are a part of the classification wording.

2. Notes. Notes following a classification are part of that classification and control its use.

Example of C-1 and 2 above
STORE: Grocery—retail
   No handling of fresh meats.

In this example, "STORE" is the caption and "No handling of fresh meats" is the note. Both are part of the classification wording.

3. Words and Phrases

a. All Employees, All Other Employees, All Operations, or All Operations to Completion: If a classification includes any of these phrases, no other classification shall be assigned to that risk unless specifically directed by classification wording, even though some operations or employees are at a separate location.

   Exceptions to 3a above
   (1) Classifications describing an operation which is a standard exception or general exclusion shall apply.
   (2) Any separate and distinct business shall be separately classified when conditions of Rule IV-D exist.

Examples of 3a above
(1) Code 9186—Circus—Traveling—All Employees and Drivers.
   All of the employees of such a risk shall be assigned to this code.

(2) Code 8385—Bus Company—Garage Employees
   Code 8394—Bus Company—All Other Employees and Drivers
   All employees, other than garage employees, shall be assigned to Code 8394 in such a risk.

(3) Code 5402—Greenhouse Erection—All Operations
   All work for erection of a greenhouse shall be assigned to Code 5402.

(4) Code 6005—Jetty Construction—All Operations to Completion & Drivers Caisson, cofferdam work or pile driving to be separately rated.
   All work for the construction of a jetty shall be assigned to Code 6005 except for caisson, cofferdam or pile driving operations which are separately rated.

   These examples are subject to exceptions (1) and (2) above.

b. Clerical means clerical office employees and drafting employees as defined in Rule IV-B-2a and b.

c. Drivers means drivers, chauffeurs and their helpers as defined in Rule IV-13-2c.

d. Includes or &. If a classification contains "Includes" or "&", the operations or employees which are so designated shall not be assigned to a separate classification even though such operations or employees are described by another classification or are at a separate location. The absence from a business of any or all of the operations or employees described in the inclusion shall not render the classification inapplicable to the risk.

   Example of 3d above
   Code 5184—Insulation—Steam Pipe or Boiler & Drivers—Includes shop. This classification also applies to shop operations and drivers.

e. No or Not: A classification which includes a restrictive phrase beginning with "no" or "not" shall not apply to any risk which conducts any operation described in the restrictive phrase.

   Exceptions to 3e above
   (1) For mercantile businesses, such as dealers or stores, or for mining businesses, this rule applies to each location.
   (2) For construction operations, this rule applies to each job or location.
E. PAYROLL ASSIGNMENT-MULTIPLE CLASSIFICATIONS

i 1. Miscellaneous Employees. Miscellaneous employees such as general superintendents, foremen, maintenance or power plant employees, elevator operators, receiving or shipping clerks and yard employees may perform duties which are incidental to more than one basic classification. The payroll of miscellaneous employees shall be assigned to the classification with the greatest amount of payroll for the group of classifications to which their work pertains. For employers subject to payroll limitation, Rule V.G., limited payroll shall be used. In the application of this rule to construction or erection risks, the governing classification shall be determined on the basis of the job if payrolls are kept separately by job; otherwise on the basis of the entire policy period.

Exception to 1 above
If the governing classification is a standard exception classification, refer to Rule IV. D.6.

Example of 1 above
Four story factory—two floors general job machine shop and two floors plastic goods manufacturing:
Code 3632—Machine Shop NOC applies to machine shop.
Code 4452—Plastics Mfg. applies to plastic goods manufacturing.

The elevator operators, porters and cleaners serving all four floors shall be assigned to the governing classification.

2. Interchange of Labor. Some employees, who are not miscellaneous employees, may perform duties directly related to more than one classification. An example is an employee who from time to time interchanges between operations subject to more than one classification. When there is such an interchange of labor, the entire payroll of employees who interchange shall be assigned to the highest rated classification representing any part of their work. In addition, the following applies:

a. For construction, erection, stevedoring, part-time aircraft operations in connection with Code 7421—Aircraft Operations, sawmill, logging, or lumbering or installation, servicing or other operations performed away from the employer’s premises, the payroll of an individual employee may be divided and allocated to more than one classification, provided the entries on the original records of the insured disclose an allocation of each such individual employee’s payroll. An estimated or percentage allocation of payroll is not permitted.

b. Code 8809—Executive Officers, Code 8810—Clerical, Code 8871—Clerical Telecommuter Employees, Code 8742—Outside Salespersons and Code 7380—Drivers, Chauffeurs and Their Helpers are not available for division or payroll under this rule. Therefore, should an employee qualify for a division of payroll and also perform duties associated with classification Codes 8809, 8810, 8871, 8742, or 7380, the payroll will be allocated to the classification with the greatest amount of payroll. If no single classification code represents the greatest amount of payroll, then the payrolls for the operations contemplated by classification Codes 8809, 8810, 8871, 8742, or 7380 shall be assigned to the highest rated classification code representing any part of the employee’s work.

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

c. Should any employee qualify for a division of payroll, all holiday, vacation, sick pay, overtime and all other forms of remuneration, not directly attributable to a specific classification code, shall be allocated to the classification code with the greatest amount of payroll. If no single classification code has the greatest amount of payroll, the payroll for holiday, vacation, sick pay, overtime and all other forms of remuneration shall be allocated to the classification code with the highest rate.

F. HOW TO SHOW CLASSIFICATIONS IN ITEM 4 OF THE INFORMATION PAGE

1. Business Described by a Classification. For a business described by a classification, show the classification wording, with or without notes, show any caption which precedes several related classifications and show the code number. Underlined, capitalized classification wording may be used instead of the entire wording.

2. Business Not Described by any Classification. For a business not described by any classification, show wording which describes the business. With this wording, show the code number of the classification which most closely describes the business. Such an assignment is controlled by all of the rules applicable to the assigned classification.

Example of 2 above
An employer manufactures textile lamp shades. There is no classification in the Manual which describes or mentions lamp shade manufacturing. The classification in the Manual which most closely describes lamp shade manufacturing is Code 2553—Furnishing Goods Mfg., which applies to the manufacture of a variety of house furnishings. Consequently, Code 2553 is applicable and therefore the Information Page could show the more descriptive wording:

Lamp Shade Mfg.—from textiles—2553

All of the rules pertaining to the assigned classification apply to such a business. For example, if drivers are included in the assigned classification, they shall be included in the wording used to describe the business.
RULE V—PREMIUM BASIS
Item 4 of the Information Page—continued

A. BASIS OF PREMIUM—TOTAL REMUNERATION

Premium shall be computed on the basis of the total remuneration paid by the insured for services of employees covered by the policy.

Exception(s)

1. Some classifications have a premium basis other than total remuneration. For example, premium for domestic worker classifications is computed on a per capita basis. Refer to Rule XIV.

2. Certain construction classifications have premiums computed on the basis of limited remuneration. Refer to Rule V.G.

B. REMUNERATION—PAYROLL

1. Definition. Remuneration means money or substitutes for money.

2. Inclusions. Remuneration includes:

   a. Wages or salaries including retroactive wages or salaries;
   b. Total cash received by employees for commissions and draws against commissions;
   c. Bonuses including stock bonus plans;
   d. Extra pay for overtime work except as provided in Rule V-E;
   e. Pay for holidays, vacations or periods of sickness. (Refer to Rule IV.E.2. for allocation of payroll for employees subject to more than one classification code);
   f. Payment by an employer of amounts otherwise required by law to be paid by employees to statutory insurance or pension plans, such as the Federal Social Security Act;
   g. Payment to employees on any basis other than time worked, such as piecework, profit sharing or incentive plans;
   h. Payment or allowance for hand tools or power tools used by hand provided by employees either directly or through a third party and used in their work or operations for the insured;
   i. The rental value of an apartment or a house provided for an employee based on comparable accommodations;
   j. The value of lodging, other than an apartment or house, received by employees as part of their pay, to the extent shown in the insured's records;
   k. The value of meals received by employees as part of their pay to the extent shown in the insured's records;
   l. The value of store certificates, merchandise, credits or any other substitute for money received by employees as part of their pay (refer to Exclusions below for certain fringe benefits ["substitutes for money"] not considered to be remuneration);
   m. Payments for salary reduction, employee savings plans, retirement or cafeteria plans (IRC 125) which are made through employee authorized salary deductions from the employee's gross pay;
   n. Wages paid to employees as salary in conjunction with the Davis-Bacon Act or other prevailing wage laws;
   o. Annuity plans;
   p. Expense reimbursements to employees to the extent that an employer's records do not substantiate that the expense was incurred as a valid business expense; NOTE: When it can be verified that the employee was away from home on the business of the employer, but the employer did not maintain verifiable receipts for incurred expenses, a reasonable expense allowance, limited to a maximum of $30 for each such day, will be permitted.
   q. Payment for filming of commercials excluding subsequent residuals which are earned by the commercial's participant(s) each time the commercial appears in print or is broadcast.

3. Exclusions. Remuneration excludes:

   a. Tips and other gratuities received by employees;
   b. Payments by an employer to group insurance or group pension plans for employees, other than payments covered by Rule V-13-2f and Rule V-13-2m;
2. **Exclusion of Overtime Payroll.** The extra pay for overtime shall be excluded from the payroll on which premium is computed as indicated in a. or b. below, provided the insured's books and records are maintained to show overtime pay separately by employee and in summary by classification.

   a. If the records show separately the extra pay earned for overtime, the entire extra pay shall be excluded.

   b. If the records show the total pay earned for overtime (regular pay plus overtime pay) in one combined amount, 1/3 of this total pay shall be excluded. If double time is paid for overtime and the total pay for such overtime is recorded separately, 1/2 of the total pay for double time shall be excluded.

**Exception to 2 above**

Exclusion of overtime pay does not apply to payroll assigned to any classification under the caption "Stevedoring" with a code number followed by the letter "F".

i F. **PAYROLL LIMITATION—Other Than Construction Classifications Contained in Rule V.G.**

1. **When Payroll Limitation Applies.** Payroll limitation applies after any deductions of extra pay for overtime.

2. **How Payroll Limitation Applies.** For classifications with notes which indicate payroll limitation, the payroll on which premium is based shall exclude that part of the employee's average weekly pay in excess of the applicable weekly limitation, provided:

   a. Books and records are maintained to show separately the total payroll earned by each employee whose average weekly pay for the total time employed during the policy period exceeds the weekly payroll limitations, and

   b. Separate records are maintained in summary by classification for such employees.

3. **Partial Week.** A part of a week shall be treated as a full week in determining average weekly pay.

i G. **PAYROLL LIMITATION—Construction Employment Classifications**

1. **To Whom Payroll Limitation Applies.** Employers with payroll in the following construction classifications, excluding any employments engaged in the construction of one or two-family residential housing, are subject to payroll limitation. **Note: Construction, for purposes of this rule, includes new construction, as well as remodeling, repairs and maintenance on existing structures.**

   0042 5069 5223 5474 5547 6045 6259 7855
   3365 5102 5348 5479 5606 6204 6260 8227
   3724 5160 5402 5480 5610 6216 6306 9526
   3726 5183 5403 5491 5648 6217 6319 9527
   3737 5184 5428 5506 5703 6229 6325 9534
   5000 5188 5429 5507 5709 6233 6400 9539
   5022 5190 5443 5508 6003 6235 6701 9545
   5037 5193 5445 5536 6005 6251 7536 9549
   5040 5213 5462 5538 6017 6252 7538 9553
   5057 5221 5473 5545 6018 6254 7601
   5059 5222

   For example, an employer performing plumbing work in a commercial or retail building (Code 5183) would have that payroll subject to payroll limitation; however, payroll from plumbing work performed in one or two-family residential housing, also Code 5183, would not be subject to payroll limitation.

2. **When Payroll Limitation Applies.** Payroll Limitation applies after any deductions of extra pay for overtime.
3. **How Payroll Limitation Applies.** For the classifications and employments specified in 1. above, an employer’s payroll shall be the actual weekly payroll per employee otherwise determined in accordance with the rules of this manual subject to:

   a. a maximum of $900 per week plus one-half of the difference between the employee’s total payroll and the limited payroll for policies with effective dates beginning October 1, 1999 and ending September 30, 2000.

   b. a maximum of $900 per week for policies with effective dates beginning October 1, 2000 and ending September 30, 2001.

   c. a maximum of $800 per week for policies with effective dates beginning October 1, 2001 and ending September 30, 2002.

   d. a maximum of the greater of $750 per week or the weekly wage upon which the maximum weekly benefit is based for policies with effective dates on and after October 1, 2002.

**Note**

1. Actual weekly payroll per employee must be used to determine the limited payroll for those construction classifications subject to this rule. Payroll from construction of one or two-family residential housing must be excluded from the employee’s weekly payroll prior to the application of any payroll limitation required by this rule.

2. If an employer does not provide sufficient employee payroll records necessary to segregate residential from commercial employments, no payroll limitation shall apply.

3. An employee’s weekly earnings for payroll limitation purposes shall be assigned to the territory in which the majority of the week’s work was performed.

4. If an employer whose employees perform work in more than one geographic territory, as defined in the “Miscellaneous Values” in Part Three-Rates, is unable to provide sufficient employee payroll records necessary to identify employee payrolls by territory, all payroll will be assigned to the territory with the next highest premium differential to that of the employer’s home office or New York base of operations.

   **Exception:** In any case in which investigation of a specific job discloses that it was performed in the territory with the highest premium differential, all payroll shall be assigned to that territory.

5. Employee payroll earned from work performed outside of New York State and utilized as New York payroll for premium determination purposes shall be assigned to the territory in which the home office or New York base of operations of the employer is located and will be subject to payroll limitation.

6. Refer to the Digest of Rulings and Interpretations for examples, as well as commonly asked questions and answers regarding payroll limitation.

4. **Partial Week.** A part of a week shall be treated as a full week in determining an employee’s weekly pay for limitation purposes.
G. AUDIT OF PAYROLL AND ADJUSTMENT OF PREMIUM

The rules, classifications and rates in this Manual shall govern the audit of payrolls and adjustments of premiums, subject to the following requirements:

1. The carrier shall make an actual audit of the employer's records for the purpose of determining the premium in accordance with the following:

   a. Each risk producing an annual premium of $5,000 or more shall be audited at least once a year.

   b. Except as provided in subdivision (c), following, each risk producing an annual premium of less than $5,000 shall be audited the first year it is written by a particular carrier, and at least once every three years thereafter. In each year when such a risk is not audited, a signed payroll statement shall be obtained from the employer.

   c. In instances where an audit is clearly impracticable, such as private residences or building operations risks served by one or two employees, an actual audit may be waived and a signed payroll statement from the employer may be accepted.

2. The payroll auditor shall make up his reports directly from the books of account and original payroll records of the employer. In every instance the audit must commence within one-half month of the policy inception date and should show the source or sources from which the payrolls were obtained. On policies subject to monthly, quarterly, or semi-annual audit, the Deposit Premium shall be determined and paid in accordance with the rules in Section VI-F, and then the carrier shall:

   a. Charge premium for each interim period as well as for the final period on the basis of actual audits, or

   b. Charge premium for each interim period on the basis of signed payroll statements from the employer, or

   c. Charge the balance of the estimated annual premium on the basis of equal interim payments which aggregate such balance.

3. For construction employers subject to the provisions of Rule V.G., a carrier may enter into agreement with the New York State Department of Taxation for the purpose of verifying an employer's payroll records. Note that this verification is limited to a representation by the Department that the employer's payroll information, submitted to the Department of Taxation by the carrier, is either overstated or understated.

H. PREMIUM MODIFICATIONS

1. **Experience Rating Plan.** If the risk is subject to experience rating, the experience rating modification shall be shown in Item 4 of the Information Page and applied to the premium in accordance with the Experience Rating Plan Manual.

2. **Merit Rating Plan.** If the risk is subject to merit rating, the merit rating factor shall be shown in Item 4 of the Information Page and applied to the premium in accordance with the Experience Rating Plan Manual.
I. PREMIUM DETERMINATION FOR CONSTRUCTION EMPLOYMENTS SUBJECT TO RULE V.G.

Employers subject to Rule V.G. shall have their manual premiums adjusted to reflect payroll limitation in the following manner:

1. Limited payroll, as determined in accordance with Rule V.G., will be applied to the published or authorized rate for each applicable construction classification(s) to determine the manual premium.

2. A territory differential shall be applied to each portion of the manual premium corresponding to the geographic territory in which work has actually been performed. Refer to the Miscellaneous Values section in the rate pages for the geographic territory definitions and differentials.

   Note: Territory differentials are not to be applied to premiums determined from employments engaged in the construction of one or two-family residential housing as defined in Rule V.G.1.

3. Both manual premium(s) and territory differential premium(s) are subject to experience rating. The differential premium is to be reported to the Board under the following statistical codes:

   - Territory 1 Differential Premium - Code 9126
   - Territory 2 Differential Premium - Code 9127
   - Territory 3 Differential Premium - Code 9128

4. Examples: The rates and differentials used in these examples are for illustrative purposes only.

   Example A:

   | Class Rate | $12.50 |
   | Total (Unlimited) Payroll | $1,108,000 |
   | Payroll from Residential Construction | 0 |
   | Limited Payroll from Commercial Construction |
   | Territory 1 | $700,000 |
   | Territory 2 | $300,000 |
   | Manual Base Premium | $125,000 (7000+3000) x 12.50 |
   | Territory 1 Differential | 0.135 |
   | Territory 2 Differential | 0.100 |
   | Territory 1 Differential Premium | $11,813 (7000 x 12.50 x 0.135) – Code 9126 |
   | Territory 2 Differential Premium | $3,750 (3000 x 12.50 x 0.100) – Code 9127 |
   | Total Premium Subject to Experience Rating | $140,563 (125,000 + 11,813 + 3,750) |
Example B:

<table>
<thead>
<tr>
<th>Class Rate</th>
<th>$12.50</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total (Unlimited) Payroll</td>
<td>$1,625,000</td>
</tr>
<tr>
<td>Payroll from Residential Construction</td>
<td>$500,000</td>
</tr>
<tr>
<td>Limited Payroll from Commercial Construction</td>
<td></td>
</tr>
<tr>
<td>Territory 1</td>
<td>$715,000</td>
</tr>
<tr>
<td>Territory 2</td>
<td>$300,000</td>
</tr>
<tr>
<td>Manual Base Premium</td>
<td>$189,375</td>
</tr>
<tr>
<td>Territory 1 Differential</td>
<td>.135</td>
</tr>
<tr>
<td>Territory 2 Differential</td>
<td>.100</td>
</tr>
<tr>
<td>Territory 1 Differential Premium</td>
<td>$12,066</td>
</tr>
<tr>
<td>Territory 2 Differential Premium</td>
<td>$3,750</td>
</tr>
<tr>
<td>Total Premium Subject to Experience Rating</td>
<td>$205,191</td>
</tr>
</tbody>
</table>

Refer to the Digest of Rulings and Interpretations for additional examples.

Additional rating procedures are in Rules XII and XIII for insurance for employers subject to the U.S. Longshore and Harbor Workers' Act, the Federal Employers' Liability Act and admiralty law.

**SAFETY PROGRAMS - SURCHARGE AND CREDITS**

1. **Definition of Modified Premium** - Modified premium means, for purposes of this rule, premium determined on the basis of Board established manual rates, or carrier rates authorized by the New York State Insurance Department, and any experience rating modification.

2. **Premium Surcharge and Credits** - The premium surcharge and credits applicable to risks subject to Sections 134 and 135 of the Workers' Compensation Law shall be determined as follows:

   a. The premium surcharge imposed on an employer for failure to initiate a Compulsory Safety Consultation or implement the recommendations of a certified loss consultant shall be a 5% charge applied to modified premium as defined in 1. above. The premium surcharge is not subject to experience rating and is to be reported to the Board under Statistical Code 9747.

      **Note:** An additional 5% charge shall be made in each successive year of non-compliance (e.g., first year, 5%; second year, 10%; third year, 15%; etc.)

   b. The premium credit to qualified employers for the implementation of an approved Safety Incentive Plan shall be a 5% credit applied to modified premium as defined in 1. above. The premium credit is not subject to experience rating and is to be reported to the Board under Statistical Code 9746.

      **Note:** An employer subject to a compulsory workplace safety consultation is not eligible for this credit. The credit shall be provided to the employer at the end of the policy year and shall be applicable for two consecutive years.
RULE IX—SPECIAL CONDITIONS OR OPERATIONS AFFECTING COVERAGE AND PREMIUM

A. EXECUTIVE OFFICERS

1. **Definition.** Executive officers of a corporation are the President, Vice President, Secretary, Treasurer or any other officer appointed in accordance with the charter or by-laws of the corporation.

   Executive officers of an *unincorporated* association are the President, Vice President, Secretary, Treasurer or any other officer appointed in accordance with the charter or by-laws of the unincorporated association.

2. **Law and Status.** Executive officers of a corporation are mandatorily covered under the New York Worker’s Compensation Law, and therefore, have the same status as employees under the policy. Those executive officers who are specifically exempted from the law and those who may make an election not to be covered are described in A.4. below.

3. **Exempt Executive Officers.**

   a. Executive officers of religious, charitable, educational, or municipal corporations, and officers of any post or chapter of organizations of veterans of any war of the United States are excluded from the policy coverage unless the corporation elects to provide coverage by filing a notice with the carrier, upon a form prescribed by the Workers’ Compensation Board, that the officers named in the form are to be voluntarily included under the policy.

   b. To include executive officers of such corporations attach the New York Non-Subject Executive Officers Coverage Endorsement (WC 31 03 12).

4. **Corporations With One or Two Executive Officers.** If a corporation has only one or two executive officers that (i) hold all the executive offices, and also (ii) hold all of the issued and outstanding stock of the corporation, with each executive officer of a two-person corporation holding at least one share of stock in the corporation, then the following statutory conditions apply with respect to the exclusion of such officer(s):

   a. **Where Coverage Is Required.** When a corporation employs one or more persons who are required to be covered under the law, then executive officers are statutorily covered; however, the sole officer or, in the case of a corporation with two executive officers, one or both executive officers of such a corporation may be excluded if an election is made by the corporation filing a notice with the carrier on Form C-105.51 as prescribed by the Workers’ Compensation Board. Attach the New York Exclusion of Executive Officer Endorsement (WC 31 03 05B) when the sole officer or one or both officers of a two-person corporation are to be excluded.

   b. **Where Coverage Is Not Required.** An officer(s) of a corporation that does not employ any person who is required to be covered under the law is statutorily excluded from coverage. However, coverage may be elected for such executive officer(s) by obtaining a standard workers compensation policy. Attach the New York Inclusion of Executive Officer Endorsement (WC 31 03 06A).

5. **Executive Officers—Not-For-Profit Organizations.** Not-for-profit unincorporated associations or not-for-profit corporations may elect to exclude unsalaried executive officers from coverage. A written notice must be made by the organization and filed with the carrier on a form prescribed by the Worker’s Compensation Board. Attach the New York Executive Officers Exclusion Endorsement (WC 31 03 04) when such officers are to be excluded.
6. **Premium Determination.**

   a. **Corporations.** Premium for executive officers shall be based on their total payroll, subject to the following limitations:

      (1) The minimum individual payroll for an executive officer is shown under "Miscellaneous Values" in Part Three—Rates.

      (2) The maximum individual payroll for an executive officer is shown under "Miscellaneous Values" in Part Three—Rates. See paragraph 7. below for executive officers subject to construction classifications as provided in Rule V.G.1.

      (3) The payroll limitations in 1. and 2. apply to the average weekly payroll of each executive officer for the number of weeks the officer was employed during the policy period.

      (4) An inactive executive officer shall be included at the fixed amount of $100 payroll per year.

      (5) In the case of elective or appointive officers of municipal corporations or other political subdivisions of the State, covered by the policy, the minimum individual payroll and the fixed amount to be included for an officer who serves without pay shall be $100 per year. If such executive officers serve with pay, then provisions 1., 2. and 3. apply.

      (6) The maximum and minimum payroll limitations in Rules 1. and 2. above are applicable to executive officers regardless of the classification(s) to which the executive officers are assigned.

   b. **Not-for-Profit Unincorporated Associations.** Premium for executive officers shall be based on the greater of either (1) or (2) below:

      (1) The actual payroll of the officer during the policy period.

      (2) One-half of the minimum remuneration for executive officers as shown under "Miscellaneous Values" in Part Three—Rates shall be used.

   **Note:**

   (a) In the initial year of the payroll limitation program (10/1/99 - 9/30/00), the maximum payroll shall not exceed the payroll maximum for executive officers as shown under “Miscellaneous Values” in Part Three—Rates.

   (b) Executive officer payrolls as a result of work performed with respect to one or two-family residential housing are subject to the maximums as provided in paragraphs (2) through (6) above.

   **NOTE:** Unsalaried officers are subject to Rule 6.b.2.
7. **Assignment of Payroll.**

   a. The payroll of executive officers whose duties are of an executive, clerical or supervisory character, and who do not regularly and frequently perform such duties as are ordinarily undertaken by a foreman, worker or salesperson shall be assigned to Code 8809—Executive Officers, without division except as provided in Rule IX-A.7.

   b. The payroll of any executive officer who regularly and frequently performs such duties as are ordinarily undertaken by a foreman, worker or salesperson shall be classified in the same manner as any other employee who is not an executive officer.

   c. Any executive officer who regularly and frequently engages in the duties of a salesperson, as described by the Standard Exception classification, Code 8742, in connection with a classification which specifically includes salespersons in its phraseology, shall nevertheless be assigned to Code 8742.

Any executive officer who qualifies for Code 8809 shall be assigned to that code even though the classification which describes the insured's business includes clerical employees.

8. **Flight Duties.** The payroll of an executive officer who is a pilot or member of the crew on any aircraft used in the employer's business shall be assigned to the appropriate aircraft classification. Where Code 7421—Aircraft Operations applies, the executive officer's payroll shall be assigned as follows:

   a. For each week during which the executive officer did not perform flight duties, assign the officer's payroll as provided in Rule IX-A.6.

   b. For each week during which the executive officer performed flight duties, assign the officer's payroll for that week to Code 7421—Aircraft Operation—flying crew. If an executive officer's non-flying duties in such a week are subject to a higher rated classification, that higher rated classification shall be assigned in that week.

Rules 8a. and b. apply on the basis of the pilot's log book required under Federal regulations or other verifiable records.

If Code 7421—Aircraft Operation—flying crew - applies and verifiable records are not maintained to indicate those weeks during which flying is performed by executive officers, their payroll shall be assigned to the highest rated classification which applies to any of their operations.

B. **SOLE PROPRIETORS AND PARTNERS**

1. **Definition.** A sole proprietor is a self-employed person. A partner is a partner of a partnership as defined in section ten of the Partnership Law, but does not include a "limited" partner.

   In general, a limited partner invests capital only, and is exempt from personal liability or risk beyond the investment actually contributed to the firm. Such partners do not hold themselves out as general partners nor participate in the conduct of the business in any manner.

   The definition of partner, as used in this Rule, shall also include members of Limited Liability Companies ("LLC"), and Professional Service Liability Companies ("PSLC") established pursuant to the Limited Liability Company Law, and partners of Registered Limited Liability Partnerships ("RLLP") established pursuant to the Partnership Law.
2. **Law and Status.** Sole proprietors and partners may elect to be covered under the policy by filing, upon a form prescribed by the Workers' Compensation Board, a notice of the election of the named individuals.

3. **Coverage.**
   
a. Upon election, coverage for a sole proprietor or partner having other persons covered under a policy may be effected by attaching the New York Sole Proprietors and Partners Coverage Endorsement (WC 31 03 13A).

b. Coverage for a sole proprietor or partner having no other persons requiring coverage may be effected by obtaining a workers compensation policy.

c. A sole proprietor or partner, who has previously elected coverage or has no other persons requiring coverage, may elect to be excluded from coverage. Attach the New York Sole Proprietors and Partners Exclusion Endorsement (WC 31 03 16).

4. **Premium Determination.**
   
i a) **Sole Proprietors and Partners Not Subject to the Construction Employment Payroll Limitation**– Premium for each sole proprietor or partner that has elected coverage is based on the minimum and maximum payrolls as shown under "Miscellaneous Values" in Part Three—Rates.

   i b) **Sole Proprietors and Partners Subject to the Construction Employment Payroll Limitation**– Premium for each sole proprietor or partner that has elected coverage is based on the minimum payroll as shown under "Miscellaneous Values" in Part Three—Rates. The maximum payroll for premium determination is based on the payroll limitations set forth in Rule V.G.3.

   **Note:** In the initial year of the payroll limitation program (10/1/99 - 9/30/00), the maximum payroll shall not exceed the payroll maximum for sole proprietors or partners as shown under "Miscellaneous Values" in Part Three—Rates.

5. **Assignment of Remuneration.** The remuneration of sole proprietors or partners shall be assigned to classifications and rates under the rules of this manual.
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. **Uninsured construction subcontractors are subject to payroll limitation, as set forth in Rule V.G., when payroll is utilized for premium determination purposes.** When the contract price is used in lieu of payroll records, in accordance with 3.b above, that portion of the contract price considered as payroll shall be subject to territory differentials in accordance with Rule V.I.

   d. **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.

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

   f. The above premium procedures shall also be applicable in the case of uninsured contractors or subcontractors engaged by owners of timber other than farm lands.
H. DEDUCTIBLE PROGRAM

1. **Coverage.** This medical and indemnity deductible program shall be offered to a policy holder with an estimated annual premium at inception of $12,000 or more as part of the policy or by endorsement. Under the deductible program the insurer pays all amounts in their entirety applicable to each compensable claim under Part One of the policy. Then, the insurer obtains reimbursement from the policyholder subject to the limits of the deductible amount for each occurrence. The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for compensable claims, and failure by a policyholder to reimburse any deductible amounts to the insurer shall be treated in the same manner as nonpayment of premiums. One of the following deductible amounts, per occurrence, shall be offered to a policyholder: $100, $200, $300, $400, $500, $1000, $1500, $2000, $2500 or $5000.

This program may also be offered by the carrier to any insured with an estimated annual premium at inception of less than $12,000.

2. **Premium.** The election of a deductible by a policyholder results in a premium credit being applied against the policy premium. The credit reflects both the chosen deductible amount, and the hazard group of the classification with the highest estimated amount of premium developed for any classification on the policy. The appropriateness of this credit as it relates to the proper hazard group is subject to verification upon audit.

The deductibles paid by the insured employer during any one-year period of the policy of insurance shall not exceed the estimated annual premium at inception for such policy of insurance.

A table of deductible credit values appears in the Miscellaneous Values section of the rate pages. The premium reduction for the deductible is determined before application of any experience modification, premium discount or policy change.

3. **Form of Endorsement.** A policy written under this deductible program shall attach the New York Benefits Deductible Endorsement (WC 31 03 15 A), and shall state the appropriate deductible amount.

4. **Exclusion.** Policies written to provide Ex-Medical coverage, under Rule IX-E, are not eligible for inclusion under this deductible program.

I. CONSTRUCTION CLASSIFICATION PREMIUM ADJUSTMENT PROGRAM

1. **Explanation.** The New York Construction Classification Premium Adjustment Program provides for a premium credit for up to one year for a policy which contains one or more construction classifications.

2. **Application.** The application must be received six (6) months prior to policy renewal. If the application is received subsequent to the due date, it must be accompanied by a letter stating the reason(s) for the delay. The Board will not accept or process applications that are received more than twelve (12) months after policy renewal.

3. **Credit Determination.**
   a. The insured shall submit the required payroll and hours worked information to the New York Compensation Insurance Rating Board for calculation of any applicable credit.
b. For policies effective prior to 04/01/01, the basis for determining the credit is the total payroll (excluding overtime premium pay) and hours worked for each construction classification for the third quarter, as reported to taxing authorities, for the year preceding the policy inception date. As an example:

<table>
<thead>
<tr>
<th>POLICY INCEPTION DATE</th>
<th>THIRD QUARTER PAYROLL</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/1/99 thru 3/31/00</td>
<td>1998</td>
</tr>
<tr>
<td>4/1/00 thru 3/31/01</td>
<td>1999</td>
</tr>
</tbody>
</table>

c. For policies effective after 04/01/01, the basis for determining the credit is the limited payroll of each employee for the number of hours worked (excluding overtime premium pay) for each construction classification (other than employees engaged in the construction of one or two-family residential housing) for the third quarter, as reported to taxing authorities, for the year preceding the policy date. Total payroll is to continue to be reported for employees engaged in the construction of one or two-family residential housing. For example:

<table>
<thead>
<tr>
<th>POLICY INCEPTION DATE</th>
<th>THIRD QUARTER PAYROLL</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/1/01 thru 3/31/02</td>
<td>2000</td>
</tr>
<tr>
<td>4/1/02 thru 3/31/03</td>
<td>2001</td>
</tr>
</tbody>
</table>

If the insured did not engage in operations for the complete quarter, then the last complete quarter prior to policy year inception shall be used or, if there was no complete quarter of operations prior to the policy inception, then the first complete quarter after policy inception shall be used.

c. A credit may be determined for each construction classification by dividing the total payroll, excluding overtime premium pay, by the number of hours worked to arrive at the average hourly wage for the classification.

d. In the absence of specific records for salaried employees, it will be assumed each such individual worked forty (40) hours per week.
Reserved for future use
RULE XII—U.S. LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

A. GENERAL EXPLANATION

The U.S. Longshore and Harbor Workers' Compensation Act (USL&HW Act) is a Federal law which provides for payment of compensation and other benefits to employees such as longshore and harbor workers, ship repairers, shipbuilders, shipbreakers and other employees engaged in loading, unloading, repairing or building a vessel. It applies to such employees while working on navigable waters of the United States and also while working on any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other area adjoining such navigable waters customarily used for loading, unloading, repairing or building a vessel. It does not cover masters or members of the crew of a vessel. For complete details see U.S. Code (1946), Title 33, Sections 901-950, as amended.

B. WORKERS COMPENSATION INSURANCE—PART ONE

The standard policy is used to insure the statutory obligation of an employer to furnish benefits required by the USL&HW Act. Attach the Standard Longshore and Harbor Workers’ Compensation Act Coverage Endorsement (WC 00 01 06 A) to provide such insurance. Do not designate the USL&HW Act in Item 3.A. of the Information Page.

C. EMPLOYERS LIABILITY INSURANCE—PART TWO

For operations subject to the USL&HW Act, the standard limits of liability under Part Two are:

- Bodily Injury by Accident: $100,000—each accident
- Bodily Injury by Disease: $100,000—each employee
- Bodily Injury by Disease: $500,000—policy limit

Refer to Rule VIII.

D. CLASSIFICATIONS AND RATES

1. Classifications. Classifications for insurance under the USL&HW Act are listed in "Part Two—Classifications" of this Manual.

2. Rates For Federal "F" Classifications. The manual rates for classification code numbers followed by the letter "F" include premium for operations subject to the USL&HW Act.

3. Rates For Non-Federal "Non-F" Classifications. The manual rates for classification code numbers not followed by the letter "F" do not include premium for operations subject to the USL&HW Act. If operations under such classifications involve some employees subject to the USL&HW Act, the manual rates and minimum premiums for such classifications shall be increased by the U.S. Longshore and Harbor Workers’ Compensation Coverage Percentage shown on the rate pages. Such percentage does not apply to expense constants. Such increased rate shall apply only to that portion of an employee's payroll earned while engaged in operations subject to the USL&HW Act. The increased rate procedure does not apply to incidental deliveries made on board vessels by employees of non-maritime concerns.

4. Rates For Non-Federal “Non-F” Construction Classifications. For construction classifications with employees subject to the USL&HW Act, the payroll limitation procedures set forth in Rule V.G. apply. The applicable territory differential shall be that of the territory immediately adjoining the waters upon which the work was performed.

E. EXTENSIONS OF THE USL&HW ACT

1. Defense Base Act. The Defense Base Act extends the provisions of the USL&HW Act to employers and their employees on overseas military bases and on other overseas locations under public works contracts being performed by contractors with agencies of the United States Government. Employees who are not United States citizens may be exempted from coverage upon approval of a waiver by the Secretary of Labor. For complete details, see Defense Base Act, U.S. Code (1946), Title 42, Sections 1651-54, Public Law 208, 77th Congress.

To provide such insurance, attach the Standard Defense Base Act Coverage Endorsement (WC 00 01 01 A).
NEW YORK CONSTRUCTION CLASSIFICATION PREMIUM ADJUSTMENT PROGRAM
EXPLANATORY ENDORSEMENT

The New York Construction Classification Premium Adjustment Program (NYCCPAP) allows premium credits
for some employers in the construction industry. These credits exist to recognize the difference in wage rates
between employers within the same construction industries in New York.

The declarations section of this policy will show a credit of 0.00% if you are not eligible for this credit, or if
you are eligible for this credit and have not yet applied for a credit. Credits are earned for average wages in
excess of $13.00 per hour for each eligible class. If your policy shows one of the following classification codes,
and you are experience rated, you are eligible to apply for an NYCCPAP credit:

0042 5057 5193 5429 5491 5606 6005 6233 6319 8227
3365 5059 5213 5443 5506 5610 6017 6235 6325 9526
3724 5069 5221 5445 5507 5645 6018 6251 6400 9527
3726 5102 5222 5462 5508 5648 6045 6252 6701 9534
3737 5160 5223 5473 5536 5651 6204 6254 7536 9539
5000 5183 5348 5474 5538 5703 6216 6259 7538 9545
5022 5184 5402 5479 5545 5709 6217 6260 7601 9549
5037 5188 5403 5480 5547 6003 6229 6306 7855 9553
5040 5190 5428

For policies effective prior to 04/01/01, the basis for determining the credit is the total payroll (excluding
overtime premium pay) and hours worked for each construction classification for the third quarter, as reported to
taxing authorities, for the year preceding the policy date. For example:

POLICY INCEPTION DATE  THIRD QUARTER PAYROLL
4/1/98 thru 3/31/99  1997
4/1/99 thru 3/31/00  1998
4/1/00 thru 3/31/01  1999

For policies effective after 04/01/01, the basis for determining the credit is the limited payroll of each
employee for the number of hours worked (excluding overtime premium pay) for each construction classification
(other than employees engaged in the construction of one or two-family residential housing) for the third quarter,
as reported to taxing authorities, for the year preceding the policy date. Total payroll is to continue to be reported
for employees engaged in the construction of one or two-family residential housing. For example:

POLICY INCEPTION DATE  THIRD QUARTER PAYROLL
4/1/01 thru 3/31/02  2000
4/1/02 thru 3/31/03  2001

If you have any eligible classes on your policy, you should have been notified by your insurance carrier or
the New York Compensation Insurance Rating Board approximately nine months prior to the inception date of this
policy. If you believe you may be eligible for a credit and have not received an application, you should immediately
contact your agent, insurance carrier, or the New York Compensation Insurance Rating Board.

Credits are calculated by the New York Compensation Insurance Rating Board. You must submit a completed
application to: Attention: Audit Department, New York Compensation Insurance Rating Board, 200 East Forty-
Second Street, New York, New York 10017.

Applications must be received within six months prior to the inception date of this policy (or at the latest, within
12 months after the inception date if accompanied by a letter explaining the reason for late submission).

Under no circumstances will an application for this credit be accepted more than 12 months after the
inception date of this policy.

The New York Workers Compensation and Employers Liability Insurance Manual, and not this endorsement,
govern the implementation and use of the NYCCPAP.