R.C. 1934

To the Members of the Board

RE: New York Workers Compensation
Application of U.S. Longshore & Harbor Workers’ Act Percentage
Manual Rule Clarification

The Rates Committee has adopted, and the New York State Insurance Department has approved, with an issue date of January 1, 2000, a clarification of the manual rules that specify the conditions under which the U.S. Longshore & Harbor Workers’ Act percentage is to be applied.


Currently, Rule XII.D.2 states that the manual rates for classification codes for the Federal or "F" classifications include premium for operations subject to the USL&HW Act. However, some of the classifications subject to the Admiralty/FELA Act and shown under Program II–USL&HW Act Benefits (Rule XIII) are not followed by the letter "F" but do include premium for the USL&HW Act. This rule is now revised to make reference to this fact. In addition, Rule XII.D.3 states that manual rates for Non-Federal or "Non-F" classifications do not include premium for operations subject to the USL&HW Act and further states that, if the operations for these classifications involve employees subject to the USL&HW Act, the manual rates and minimum premiums are to be increased by the USL&HW percentage. This rule has similarly been modified to take into account under which situations the USL&HW coverage percentage is applied for Admiralty/FELA classifications, which do not include Federal benefits.

Manual pages will be included in the 2000 edition of the New York manual to be distributed early this year.

Very truly yours,

Monte Almer

President
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 06A) 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 and Admiralty/FELA Classifications That Include USL&HW Act Benefits. The manual rates for classification code numbers followed by the letter "F" and those Admiralty/FELA classifications applicable to Program II—USL&HW Act benefits include premium for operations subject to the USL&HW Act.

3. Rates For Non-Federal "Non-F" Classifications and Admiralty/FELA Classifications That Do Not Include USL&HW Act Benefits. 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 rates for operations subject to the USL&HW Act, and not within the scope of classifications provided for in 2. above, are determined as follows.

a. Admiralty/FELA Classifications

The manual rates for Admiralty/FELA classifications under Program I and Program II—State Act benefits 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, assign the classifications and rates for Program II—USL&HW Act benefits applicable to such operations. Such classifications shall apply only to payroll of employees engaged in operations subject to the USL&HW Act.
b. All Other Classifications

Except as otherwise provided in 2. and 3.a. above, 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 other than Admiralty/FELA 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 New York rate pages. Such percentage does not apply to expense constants. Such increased rate shall apply only to payroll of employees 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 01A).

2. Outer Continental Shelf Lands Act. The Outer Continental Shelf Lands Act extends the provisions of the USL&HW Act to employers and their employees exploring for natural resources on the Outer Continental Shelf of the United States. That area is generally described as all submerged lands lying seaward and outside of the area of lands beneath navigable waters of the United States and subject to its jurisdiction. For complete details, see U.S. Code (1946), Title 33, Sections 901-950, as amended.

To provide such insurance, a standard provisions Workers Compensation and Employers Liability Policy shall be used with the Outer Continental Shelf Lands Act Coverage Endorsement (WC 00 01 09A).

3. Premium Determination. For insurance under extensions of the USL&HW Act, determine premium as provided in Rule XII-D.