R.C. 1960

To the Members of the Board

Re: New York Workers Compensation
    New York State Assessment
    Elimination of Loss Base Option

The Rates Committee has adopted, and the New York State Insurance Department has approved, amendments to Rule IX, L.3. of the New York Workers Compensation and Employers Liability Manual in response to Senate Bill 6800 which effectively eliminates the loss base option for the application of policyholder assessment surcharges.

Effective January 1, 2000, as explained in R.C. Bulletin 1933, dated February 3, 2000, the loss base option relative to the Special Disability Fund assessment was eliminated for private carriers as a result of the enactment of Senate Bill 5275. Other assessments were not addressed by that statute and the option to charge retrospectively rated policyholders on the basis of indemnity losses for these assessments remained unchanged.

Senate Bill 6800 changes the assessment base for private carriers to premium for all of the other assessments which, therefore, eliminates the loss base option for all of these assessments. The assessments affected include the Reopened Case Fund, expenses of the Workers’ Compensation Board, interdepartmental expenses and expenses of the Special Funds Conservation Committee.

The elimination of the loss option for the application of policyholder assessment surcharges is effective January 1, 2001, as specified in the legislation, and will be applicable to new and renewal policies. Retrospectively rated policies effective prior to January 1, 2001 that utilize the loss base option can remain on that basis through the last retrospective rating adjustment.
In addition, Rule IX, L.2. is also being amended at this time to include retention programs as another example of an independently filed program and Rule IX, L.3.a. is being amended to clarify that credits from independently filed carrier specialty programs are to be included in the premium base to which the policyholder surcharge is applied.

A copy of the amended Rule IX, L. and the applicable page from the Miscellaneous Values section of the New York Workers Compensation and Employers Liability Manual are attached for your reference.

Manual pages will be distributed as soon as they are available.

Very truly yours,

Monte Almer

President

MH/ab
Encl.
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 Workers’ 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.3. and 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, 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, the 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 Workers’ Compensation Board. Attach the New York Executive Officers Exclusion Endorsement (WC 31 03 04) when such officers are to be excluded.

Note: Code 8810 applies to executive officers of not-for-profit unincorporated associations subject to the limitations stated in Rule 7—Assignment of Payroll and Rule 8—Flight Duties shown below. Code 8809 applies only to executive officers of corporations.

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) above 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.

(7) The maximum payroll for executive officers subject to construction classifications, as provided in Rule V.G.1, shall be based on the payroll limitations set forth in Rule V.G.3.

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.
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:** 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. In connection with a classification which specifically includes salespersons in its phraseology, any executive officer who regularly and frequently engages in the duties of a salesperson, as described by the standard exception classification Code 8742, shall be assigned to Code 8742 and not Code 8809.

d. 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 8.a. 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.

**Note:** Refer to Section I.H.13 of the Digest of Rulings and Interpretations.
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 a Limited Liability Company ("LLC"), and a Professional Service Liability Company ("PSLC") established pursuant to the Limited Liability Company Law, and partners of a Registered Limited Liability Partnership ("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

a. Sole Proprietor 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.

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. Refer to Section I.H.1 of the Digest of Rulings and Interpretations.

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.

Note: Refer to Section I.H.13 of the Digest of Rulings and Interpretations.
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\(\frac{1}{3}\)% 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 3.b. 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 VI.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, one-third (\(\frac{1}{3}\)) 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, one-third (\( \frac{1}{3} \)) of the total 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 or merit rating factor has been established for the contractor, such factor shall be applied to the premium developed for the uninsured subcontractor.

f. 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.2.g.

b. The rules on standard exceptions 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 police 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. Attach the New York Medical Benefits Reimbursement Endorsement (WC 31 03 10) to such policy, and also file a copy showing the name and location of the 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 the employer 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 the New York Excess Medical Coverage Endorsement (WC 31 03 03) to the ex-medical policy. 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 Rating 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 its 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 Officers 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 Officers 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 06 02).**

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).**

**H. DEDUCTIBLE PROGRAM**

1. **Coverage**

This medical and indemnity deductible program shall be offered to a policyholder 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, $1,000, $1,500, $2,000, $2,500 or $5,000.

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 injured 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 15A) 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 Rating 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 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>

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.

e. The factors for each hourly wage shown below are used in the calculation of the insured’s final credit:

<table>
<thead>
<tr>
<th>Hourly Wage</th>
<th>Factor</th>
<th>Hourly Wage</th>
<th>Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $13.00</td>
<td>.00</td>
<td>$24.01—$24.50</td>
<td>.19</td>
</tr>
<tr>
<td>$13.00—$14.00</td>
<td>.03</td>
<td>$24.51—$25.00</td>
<td>.20</td>
</tr>
<tr>
<td>$14.01—$15.00</td>
<td>.04</td>
<td>$25.01—$26.00</td>
<td>.21</td>
</tr>
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</tr>
<tr>
<td>$16.01—$17.00</td>
<td>.06</td>
<td>$27.01—$28.00</td>
<td>.23</td>
</tr>
<tr>
<td>$17.01—$18.00</td>
<td>.07</td>
<td>$28.01—$29.00</td>
<td>.24</td>
</tr>
<tr>
<td>$18.01—$19.00</td>
<td>.08</td>
<td>$29.01—$30.00</td>
<td>.25</td>
</tr>
<tr>
<td>$19.01—$19.50</td>
<td>.09</td>
<td>$30.01—$31.00</td>
<td>.26</td>
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<td>.27</td>
</tr>
<tr>
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<td>.11</td>
<td>$32.01—$33.00</td>
<td>.28</td>
</tr>
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<td>.12</td>
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<td>.29</td>
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<td>.34</td>
</tr>
<tr>
<td>$23.51—$24.00</td>
<td>.18</td>
<td>$39.01 and over</td>
<td>.35</td>
</tr>
</tbody>
</table>

f. The total construction classification base credit amount, in dollars, must be calculated and then divided by the total policy premium at manual rates including construction and non-construction classifications. The result will be the average base credit percentage which is then used to calculate the final credit to be applied to the policy.

When calculating the policy credit, the percentage shall be rounded to the nearest whole number with .5 being rounded upward (as an example, 5.4 rounded to 5% and 5.5 rounded to 6%).

Construction classifications are those classifications subject to the following codes:
4. **Experience Modification**

   The policy must be experience rated to be eligible for this program.

5. **Audit**

   a. The carrier shall, upon audit, verify the information that was submitted by the insured and used in the calculation of the credit. If the carrier discovers an error in the original request for policy credit, the revised information must be submitted to the Rating Board for recalculation.

   b. If the insured does not furnish records to verify the payrolls and hours worked originally submitted and used in the calculation of the credit, there shall be no credit applied to the policy.

6. **Information Page**

   The credit, authorized by the Rating Board, shall appear on Item 4 of the Information Page.

   If a credit has not been authorized for the insured, the value of ".00" is to be shown on the Information Page.

7. **Form of Endorsement**

   The New York Construction Classification Premium Adjustment Program Explanatory Endorsement (WC 31 03 19A) shall be attached to each policy.

8. **Notification to Insured**

   Carriers are required to use a standardized text letter to notify all their insureds who have one or more construction classifications on their policy that they may be eligible for a premium adjustment credit. A copy of this form must be filed, by each carrier, with the Rating Board prior to the carrier’s implementation of the program.

9. **Statistical Code**


**J. RATE TRANSITION PROGRAM**

This program applies to insureds previously rated under certain classifications that have been discontinued. It does not apply to new risks or any other programs. The Rating Board will identify affected insureds and will notify the carriers of the insureds who are subject to the program. It is then the responsibility of the carrier to administer the program for manual rates on an ongoing basis.

The manual rate published on the rate pages may not apply to each insured upon renewal of a policy which was previously written on a discontinued code. For the first year after the elimination of a code, the manual rate for an insured will be equal to a 4-1 weighting of the rate used prior to the discontinuance of the A-rated code and the newly published rate. For the second year, a 3-2 weighting is used. A 2-3 weighting is used for the third year and a 1-4 weighting is used for the fourth year. The transition program does not apply after the fourth year.
The rates used in the following examples of the transition program calculations are for illustration purposes only.

### EXAMPLE 1

<table>
<thead>
<tr>
<th>Current Rate</th>
<th>Published Rate</th>
<th>Transition Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1</td>
<td>$4 \times 5.30 + 1 \times 8.24$</td>
<td>5.89</td>
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<tr>
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<td>$\frac{4}{1}$</td>
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<tr>
<td>Year 2</td>
<td>$3 \times 5.30 + 2 \times 8.65$</td>
<td>6.64</td>
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<td>$\frac{3}{2}$</td>
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</tr>
<tr>
<td>Year 3</td>
<td>$2 \times 5.30 + 3 \times 9.08$</td>
<td>7.57</td>
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<td>$\frac{2}{3}$</td>
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</tr>
<tr>
<td>Year 4</td>
<td>$1 \times 5.30 + 4 \times 9.53$</td>
<td>8.68</td>
</tr>
<tr>
<td></td>
<td>$\frac{1}{4}$</td>
<td></td>
</tr>
<tr>
<td>Year 5</td>
<td>10.00</td>
<td>10.00</td>
</tr>
</tbody>
</table>

### EXAMPLE 2

<table>
<thead>
<tr>
<th>Current Rate</th>
<th>Published Rate</th>
<th>Transition Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1</td>
<td>$4 \times 14.82 + 1 \times 8.24$</td>
<td>13.50</td>
</tr>
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<tr>
<td>Year 2</td>
<td>$3 \times 14.82 + 2 \times 8.65$</td>
<td>12.35</td>
</tr>
<tr>
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<td>$\frac{3}{2}$</td>
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</tr>
<tr>
<td>Year 3</td>
<td>$2 \times 14.82 + 3 \times 9.08$</td>
<td>11.38</td>
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<td>$\frac{2}{3}$</td>
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<td>$1 \times 14.82 + 4 \times 9.53$</td>
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</tr>
<tr>
<td>Year 5</td>
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<td>10.00</td>
</tr>
</tbody>
</table>

Refer to the New York Experience Rating Plan Manual for the Transition Program applicable to expected loss rates.

### K. WAIVER OF RIGHT TO RECOVER FROM OTHERS

A provision in the Standard Policy allows the carrier to waive its right of recovery against anyone liable for an injury covered by the policy. Attach the Waiver of Our Right to Recover From Others Endorsement (WC 00 03 13) to waive right of recovery.

A carrier’s right to waive recovery from others applies only to the extent that an insured performs work under a written contract that requires the insured to obtain an agreement from the carrier.

A premium charge of 2% to 10% of the total premium at each job or location shall apply, subject to a minimum of $15 per job or location.
L. NEW YORK STATE ASSESSMENT

1. **Explanation**

The New York State Assessment is a separate identifiable charge to policyholders for the funding of the Special Disability Fund, Reopened Case Fund, Workers' Compensation Board expenses, Special Funds Conservation Committee expenses and interdepartmental expenses associated with the administration of OSHA requirements.

2. **General Information**

The New York State Assessment amount must be displayed as a separate identifiable charge on the policy information page.

The New York State Assessment amount is subject to change at audit and at all subsequent retrospective rating adjustments.

The New York State Assessment amount is charged in conjunction with the effective date of the rates used on each policy. Therefore, where the Anniversary Rate Date Endorsement (WC 00 04 02) applies, e.g., when two sets of rates are used, two assessment percentages will apply.

For policies written under independently filed programs, e.g., large deductible programs and retention programs, the calculation of the assessment, other than as described in this rule, must be approved by the New York State Insurance Department prior to use.

3. **Basis for Calculating the New York State Assessment**

For all policies, in accordance with applicable New York statutes (Chapter 188, Laws of 1999 and Chapter 510, Laws of 2000) premium must be used as the basis for calculating the policy charge. Premium is defined as premium determined on the basis of Rating Board or authorized (deviated) rates (or percentage premium deviation) plus any applicable territory differential premium, including any experience modification, merit rating factor, minimum premium, Construction Classification Premium Adjustment Program policy credit factor, surcharges and credits from Workplace Safety Programs and credits from independently filed carrier specialty programs (for example, alternative dispute resolution, drug-free workplace, managed care or preferred provider organization programs).

The expense constant, including the expense constant in the minimum premium, the premium discount, as defined in Rule VII, and any credit for participation in the Deductible Program as defined in Rule IX-H are excluded from the determination of the assessment charge.

For retrospectively rated policies, premium is defined as the retrospective premium, as determined by the applicable parameters of the Retrospective Rating Plan, plus the implied premium discount determined on the basis of standard premium.

4. **Assessment Charge**

The assessment percentages to be applied to each policy can be found in the Miscellaneous Values page of the rates section of this manual.

*Note:* Legislation requires that the assessment amounts collected from policyholders be considered as premium for tax purposes. Assessment charges contemplate premium tax, but not commission.
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