R.C. 2041

To the Members of the Board

RE: New York Workers Compensation
Supplement to R.C. 2031
New Restaurant Classification Codes

R.C. Bulletin 2031, dated July 23, 2003, announced the establishment of three new codes for the restaurant industry. Codes 9071, 9072 and 9074 were approved with an effective date of October 1, 2003 for new and renewal business. That bulletin provided the following explanation for Code 9071:

- Code 9071 – full-service restaurants, which also includes banquet halls and caterers. In these situations, a wait staff serves the food. There are two conditions for the eligibility for Code 9071 – one is the sale of alcoholic beverages cannot exceed 50% of the total gross receipts for the sale of food and non-alcoholic beverages and the other condition is that take-out orders cannot exceed 50% of the total gross receipts.

This explanation, however, did not accurately explain the scope of the new code. It should have read as follows:

- Code 9071 – full-service restaurants, which also includes banquet halls and caterers. In these situations, a wait staff serves the food. There are two conditions for the eligibility for Code 9071 – one is the gross receipts from the sale of alcoholic beverages cannot exceed 50% of the total gross receipts and the other condition is that take-out orders cannot exceed 50% of the total gross receipts.

We have amended Pages C-9, C-85, D-76, and D-76a, which were previously distributed with R.C. 2031 to clarify the proper intent for this code. Amended pages are attached for your reference.

Printed manual pages will be distributed as soon as they become available.

Very truly yours,

Monte Almer

President

CD:tg
Encl.
If the gross receipts for prepared items is more than 50% of the total gross receipts, the entire operation, including the bagel manufacturing, shall be rated as Code 9072 “Restaurant–Fast Food & Drivers.”

The retail sale of bagels sold without spreads or made into sandwiches shall be assigned to Code 8017 “Retail Store NOC” provided the majority (more than 50 percent) of the sales are derived from the sale of NOC items.

* BAR, Dance Club, Lounge, Nightclub or Tavern—including entertainers and/or musicians

Applies to the operation of a bar, dance club, lounge, nightclub or tavern where the gross receipts of alcoholic beverages exceed 50% of the total receipts of food and non-alcoholic beverages.

Refer to Section III of the Digest of Rulings and Interpretations to determine the application of the appropriate restaurant and/or bar classification.
STORES:
Refer to the New York Digest of Rulings and Interpretations for detailed description of operations which are subject to all store classifications included in this section.

AUTO PARTS AND ACCESSORIES STORE—wholesale  

AUTOMOBILE ACCESSORIES STORE NOC—retail—& Drivers

BAGEL SHOPS—retail
Applies to shops engaged in selling bagels with spreads and/or made into sandwiches. Includes the sale of beverages and other food for consumption on or away from the premises.

This class can only be applied if the sale of prepared items is less than 50% of the total receipts.

Bagel manufacturing to be separately rated as Code 2003 "Bakery & Route Salespersons, Route Supervisors, Drivers.*

If the gross receipts of prepared items is more than 50% of the total gross receipts, the entire operation, including the bagel manufacturing, shall be rated as Code 9072 “Restaurant–Fast Food & Drivers.”

The retail sale of bagels sold without spreads or made into sandwiches shall be assigned to Code 8017 "Retail Store NOC" provided the majority (more than 50%) of the sales are derived from the sale of NOC items.

CLOTHING or Wearing Apparel STORE—retail

CLOTHING or Wearing Apparel STORE—wholesale

COFFEE, Tea or Spice STORE—retail
No handling of fresh meats.

COFFEE, Tea or Spice STORE—wholesale

DAIRY PRODUCTS STORE—retail
No handling of fresh meats.

DAIRY PRODUCTS STORE—wholesale

DELICATESSEN STORE—retail
No handling of fresh meats.

DEPARTMENT STORE—retail
Includes installation of house furnishings and shall apply to each location of a risk at which all of the following conditions exist:

1. The payroll subject to this classification is at least $400,000 per annum.

Department Store—retail continued on the next page.
Restaurants can also provide take-out food services. Customers will either call in advance or come into the restaurant to place an outgoing food order. This is a common practice of many restaurants and such operations are included under this class provided that the gross receipts for outgoing orders do not exceed 50% of the total gross receipts.

The above types of establishments may engage in the service of alcoholic beverages. The gross receipts of alcoholic beverages, however, shall not exceed 50% of the total receipts of food and non-alcoholic beverage items sold.

**Operations Not Covered**

1. Bar, dance club, lounge, nightclub or tavern operation where the gross receipts of alcoholic beverages exceeds 50% of the total receipts. Assign Code 9074 “Bar, Dance Club, Lounge, Nightclub or Tavern–including entertainers and/or musicians.”

2. Fast food restaurants including, but not limited to, pizza parlors, sandwich shops, donut shops, concession stands, hamburger, taco and fried chicken establishments, including take-out food establishments. Assign Code 9072 “Restaurant–Fast Food & Drivers.”

3. Restaurant, bar, dance club, lounge, nightclub or tavern operated by hotels or motels. Assign Code 9058 “Hotel: Restaurant Employees.”

4. Stores engaged in principally (more than 50% of the gross receipts) selling NOC items that also prepare and serve food that constitutes less than 50% of the total gross receipts. Assign Code 8043 “Retail Store NOC–including service of food–not restaurants.”

Delivery of food orders with use of a bicycle or vehicle. Assign Code 7380 “Drivers and Helpers NOC–Commercial” provided that more than 50% of the driver’s time is spent in connection with a bicycle or vehicle.

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* 9072 Restaurant–Fast Food & Drivers

**Operations Covered**

Applies to fast food type restaurants including, but not limited to, pizza parlors, sandwich shops, donut shops, concession stands, hamburger, taco or fried chicken establishments. This class also includes take-out food establishments. These types of establishments prepare and serve food and non-alcoholic beverages which can be consumed either on or off the premises.

Customers make their food and beverage selection from a menu board or from a paper menu. A cashier will take their order and payment for their food and beverage selections. Cooks prepare the customer’s order or in some fast food establishments, food is prepared in advance and made readily available for consumption. The cashier will place the order on a tray if the customer is going to consume food on the premises. If it is a take-out order, food and beverages are placed in a bag, box, bucket, carton or container.

Telephone orders are also taken from customers. Food is prepared and ready for delivery or pick up by the customer. Food orders delivered on foot or by use of public transportation are contemplated under the scope of this class.

These types of establishments may also have a seating area for patrons to consume their purchases on the premises or they may take the food with them for off-premises consumption. These types of facilities do not employ waitresses or waiters to serve food.
Most fast food establishments provide their customers with a drive-through food service. Customers drive their vehicles adjacent to a menu board and place their order. The customer then drives to the window where the order taker is located. The order taker may either obtain the order food items themselves from the bins that already contain cooked food or will place the order with the cook. Beverages are usually dispensed into cups by the order taker. Food and beverages are bagged or boxed and given to the customer after payment is received. The customer will then leave the drive-through area.

Some fast food establishments often engage in offering the rental of their facilities for parties. The establishment will host the party and accommodate the guests by serving food, beverages, cake as well as provide other activities for guests to participate in.

**Operations Not Covered**

1. Bar, dance club, lounge, nightclub or tavern operation where the gross receipts of alcoholic beverages exceeds 50% of the total receipts. Assign Code 9074 “Bar, Dance Club, Lounge, Nightclub or Tavern–including entertainers and/or musicians.”

2. Restaurant establishments that provide traditional service where patrons are served by a wait staff. Assign Code 9071 “Restaurant–including entertainers and/or musicians.”

3. Restaurant, bar, dance club, lounge, nightclub or tavern operated by hotels or motels. Assign Code 9058 “Hotel: Restaurant Employees.”

4. Stores engaged in principally (more than 50% of the gross receipts) selling NOC items that also prepare and serve food that constitutes less than 50% of the total gross receipts. Assign Code 8043 “Retail Store NOC–including service of food–not restaurants.”

* 9074 . . . . Bar, Dance Club, Lounge, Nightclub or Tavern–including entertainers and/or musicians

9074Dance Club, Bar, Lounge, Nightclub or Tavern–including entertainers and/or musicians

9074Lounge, Bar, Dance Club, Nightclub or Tavern–including entertainers and/or musicians

9074Nightclub, Bar, Dance Club, Lounge or Tavern–including entertainers and/or musicians

9074Tavern, Bar, Dance Club, Lounge or Nightclub–including entertainers and/or musicians

**Operations Covered**

Applies to the operation of a bar, dance club, lounge, nightclub or tavern where the gross receipts of alcoholic beverages exceed 50% of the total receipts.

Some establishments may charge an entrance fee to its patrons. Service of beverages can be from a bartender or from a wait staff. Some establishments may employ a kitchen staff that prepares food that the customers order from a menu. The wait staff serves the beverages and food to the patrons and accepts payment for the same.

These types of establishments may also have a “bouncer” to oversee the patrons activities to ensure the safety or orderly conduct of all patrons.

The insured may provide entertainers such as a disc jockey or band. Some bars, lounges and taverns may provide music via a jukebox. Dance floors or designated dancing rooms may also be available for the patrons.

**Operations Not Covered**

1. Fast food restaurants including, but not limited to, pizza parlors, sandwich shops, donut shops, hamburger, taco and fried chicken establishments, concession stands and other fast food including take-out food establishments. Assign Code 9072 “Restaurant–Fast Food & Drivers.”