



COMPENSATION RATING AND INSPECTION BUREAU

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September 25, 2020

MANUAL AMENDMENT BULLETIN #500

To: All Bureau Members and Subscribers

Re: COVID-19 Manual Changes – Effective Immediately

BACKGROUND

In [Manual Amendment Bulletin #495](#), [Manual Amendment Bulletin #496](#) and [Manual Amendment Bulletin #499](#), the Rating Bureau announced that the Commissioner of Banking and Insurance (“Commissioner”) had approved amendments to the New Jersey Workers Compensation and Employers Liability Insurance Manual (Manual) that address the effects of the COVID-19 pandemic on New Jersey employers. The impacted portions of the Manual pertain to the assignment of payroll to the clerical classification code when an employee’s duties are amended and limited to office work; the exclusion of payroll that does not correspond to rendered services; an increase of the maximum Schedule Rating Credit to 35%; and a discretionary reduction in the Plan Premium Adjustment Program (PPAP) surcharge by 10 points. These changes expired 45 days after the Governor’s stay-at-home order was lifted, i.e., on July 24, 2020.

The pandemic continues to impact employers in the State of New Jersey. As a result, the Commissioner accepted an extension of these Manual amendments from July 24, 2020 to December 31, 2020. The revisions amend the time in which the applicable Manual Rule is permitted to be applied to a policy, with the effective period to be established by the Rating Bureau – **in this case, until December 31, 2020**. The attached changes to the Manual rules are indicated in **red** and are effective immediately.

MANUAL RULE CHANGES

Amend Sections 3:3-25(e); 3:3-35(e); 3:10C-3; and 3:14-8(13F) to reflect the change noted above.

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Att.

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companies, etc., the payroll of all employees not specifically included in the definitions for such Standard Exceptions shall be separately rated, all other rules of this Manual notwithstanding.

24. General Inclusions. The classifications in this Manual, other than Standard Exceptions, include the operations listed below and referred to as General Inclusions, unless specifically excluded by the language of the manual classification. Any operation described by a General Inclusion shall nevertheless be subject to division of payroll if conducted as a separate and distinct enterprise and having no relation to the operations described by any other classification applicable to the risk.

- (a) Aircraft travel by employees, other than members of the flying crew, including employees whose payrolls are assigned to the standard exception classifications.
- (b) Commissaries and restaurants except in connection with construction, erection, lumbering or mining operations.
- (c) Manufacture of containers, such as bags, barrels, bottles, boxes, cans, cartons, or packing cases.
- (d) Plant hospitals or dispensaries.
- (e) Maintenance or ordinary repair of insured's buildings or equipment when performed by employees of the insured.
- (f) Printing or lithographing.

25. General Exclusions. The classifications in this Manual including Standard Exceptions, require the operations listed below, and referred to as General Exclusions, to be separately rated and classified unless otherwise specifically provided in the classification phraseology and subject to the division of payroll rules. Operations described by General Exclusions shall require such separate rating notwithstanding that the classification wording may include the term "All" as in such phrases as "all employees," "all operations," etc.

- (a) Aircraft Operation—all members of the flying crew.
- (b) Maintenance or repair work if performed by contractors and all new construction or alteration of structures whether done by insured's employees or by contractors.
- (c) Stevedoring, whether performed by insured's employees or by contractors.
- (d) Sawmill Operations. Sawmill operations are defined as the sawing of logs into lumber by the use of circular carriage or band carriage saws, including operations incidental thereto.
- ★ (e) Employer operations, amended due to a government-declared, stay-at-home emergency order, for employees that are limited to duties that constitute those of a clerical office employee,

consistent with the provisions of Rule 3:3-26(a), are assigned to code 8810, when the established classification does not include clerical operations. This exclusion shall apply during the time of such emergency order and, if appropriate, for such limited time thereafter as is necessary for the employer to return to standard business operations, which in no case shall **extend beyond the date established by the Rating Bureau.**

26. Standard Exceptions. The following operations or employments referred to as Standard Exceptions are subject to division of payroll in connection with all other classifications regardless of directional phrases beginning with "all employees" or "all operations" except those which specifically provide for the inclusion of the payroll of certain Standard Exceptions. The Standard Exceptions are:

- (a) **Clerical Office Employees** - Code 8810 - not specifically included in descriptions of other classes assigned to the policy, and not included by other special rules, may qualify for inclusion in standard exception Code 8810 provided the definition of clerical office duties and the definition of a clerical office as described below are both met.

(i) **Clerical Office Duties**

The duties of a clerical office employee include creation or maintenance of financial or other employer records, handling correspondence, computer composition, technical drafting, and telephone duties, including sales by phone. The clerical office classification continues to apply to a qualified clerical office employee who performs a duty outside of a qualified office area when that duty does not involve direct supervision or physical labor and is directly related to that employee's duties in the office. These duties do not exclude the depositing of funds at the bank, purchase of office supplies, and pickup and delivery of mail provided they are incidental and directly related to that employee's duties in the office.

However, for purposes of this rule, the definition of clerical duties excludes outside sales or outside representatives; any work exposed to the operative hazards of the business; and any work, such as a stock or tally clerk, which is necessary, incidental, or related to any operations of the business other than a clerical office.

(ii) **Clerical Office**

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

A clerical office excludes work or service areas, areas where inventory is located, products are

or

- (ii) for work performed on Saturdays, Sundays, or holidays.

Provided, however, that in the case of guaranteed wage agreements under which the employee receives a guaranteed wage for actually working any number of hours up to a specified number of hours per week, "Overtime" shall include only those hours worked in excess of such specified number.

34. Substitutes for Money. Whenever employees are recompensed in whole or in part by the value of rent or housing, or by store certificates, merchandise, credits, or any other substitute for money, such form of payment shall be considered as remuneration and the equivalent money value thereof included.

35. Remuneration Excluded. The entire remuneration shall be used as the basis of premium, except as provided below:

- (a) Remuneration, other than as provided in 3:3-30 (i) of this Manual, shall not include payments made by the employer (1) to a group insurance or pension plan or (2) to an employee directly in lieu of (1) foregoing because of the provisions of N.J.S.A. 34:11-56 et seq., Section 276A of Title 40 of the United States Code (Davis-Bacon Act), and amendments thereto.
- (b) Remuneration shall not include special reward for individual invention or discovery.
- (c) Dismissal or severance payments except for time worked or accrued vacation.
- (d) Payments made under a formal and established sickness or personal employee benefit program for unused time paid at retirement or termination of employment.
- ★ (e) Payroll payments, consistent with a standard rate of pay, made to employees during a government-declared, stay-at-home emergency order when the employee is not rendering services during such emergency. These payments are assigned to code 0012, which shall apply during the time of such emergency order and, if appropriate, for such limited time thereafter as is necessary for the employer to return to standard business operations, which in no case shall **extend beyond the date established by the Rating Bureau.**

36. Estimated Payrolls. For each classification there shall be inserted in the policy an adequate estimate of payroll for the policy period, as hereinbefore defined. Estimated payroll shall approximate the actual expenditures as shown by previous records or by inspection.

37. Estimated Payrolls by a New Carrier. When a risk passes from one carrier to another the estimated

payroll used by the new carrier shall in no case be less than the payroll shown on the expiring policy unless the carrier of the expiring policy shall concur upon such lesser estimate. The requirements of any carrier as to estimated payroll shall be subject to the approval of the Rating Bureau.

38. Division of Single Employee's Payroll. The payroll of any one employee shall not be divided between two or more classifications. The entire payroll of each employee shall be assigned to the highest rated classification representing any part of his work. This rule shall not apply in the case of construction, erection, stevedoring work or the operation of aircraft where the rules of this Manual permit division of payroll provided the original records of the employer disclose the proper allocation of the individual employee's time.

39. Executive Officers Defined. Executive Officers are defined as the active, regularly constituted officers of a corporation or unincorporated association and shall include those commonly known and styled as President, Vice President, Secretary or Treasurer.

In order to be considered a "regularly constituted" officer, all three of the following criteria must be met:

- (a) Those persons must be duly named in the Corporate or Business Charter as filed with the Secretary of State of the State of incorporation or the Governing body for the trade name filings;
- (b) Those persons must be duly elected or appointed as evidenced and verified in accordance with the By-Laws and shown in the minutes of the Board meeting; and
- (c) Those persons must have decision making authority in the day-to-day operations of the employer via regular and annual meetings of the officers and/ or Board of Directors.

Regularly constituted officers are "active" only if at least one of the following conditions are met:

- (a) They have regular duties; or
- (b) They receive remuneration for services rendered.

40. Executive Officers' Payroll. In every instance the payroll of all active executive officers shall be included in the statement of payroll and a premium charge thereon subject to a maximum average individual payroll of two thousand six hundred forty dollars (\$2,640) per week and a minimum average of six hundred sixty dollars (\$660) per week.

41. Adjustment of Executive Officer's Maximum and Minimum Payroll. Subject in each and every case to submission to and approval of the Rating Bureau upon the basis of a complete statement of facts, the maximum average and minimum average payroll required by this rule shall be subject to pro rata adjustment where the executive does not devote his entire business time to the risk subject to audit.

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PART THREE
SECTION 10C. SCHEDULE RATING PLAN

1. Introduction. For the purposes of this plan, Schedule Rating means the application of judgment credit and debit factors to the modified premium for the purpose of reflecting individual risk characteristics that are not reflected in its experience. The use of any other approved rating plan shall not duplicate the credits or debits considered in this plan. The schedule rating factors apply only to characteristics that reflect potential hazards. The Schedule Rating Plan is not mandatory.

2. Eligibility. All risks that generate premium in excess of the classification minimum premium are eligible for schedule rating, except for risks written through the New Jersey Workers Compensation Insurance Plan. In no instance can the premium charged to a risk be less than the minimum premium.

3. Application. A schedule rating credit is subject to a maximum total of -25% and a schedule rating debit is subject to a maximum total of +25%. The schedule rating credit or debit factor is applied to the individual risk modified premium to determine the schedule rating premium adjustment. Modified premium is described in 3:3-56 of this Manual. Two or more entities that are combinable for experience rating may be issued on separate policies. In these instances different schedule rating factors may be applied to reflect variances in each entity's operations.

Acceptance of a policy by an insured shall constitute agreement with the amount of schedule rating credit or debit, if applicable, or with the absence of any such credit or debit, if not applicable. No schedule rating credit or debit may be changed midterm without the mutual agreement of the insured risk and the underwriting carrier. Further, no schedule rating credit or debit may be effective prior to the receipt of information about a risk by the underwriting carrier that supports the schedule rating credit or debit in question.

The following risk characteristics are eligible under this plan for assignment of credits or debits subject to the maximum ranges set forth below:

Risk Characteristic	Range of Credits or Debits
Features of workplace maintenance or operation	-25% to +25%
Risk elements not addressed in the classifications assigned	-25% to +25%
Availability of medical facilities in or near workplace	-10% to +10%
Safety equipment/devices present or missing from workplace	-10% to +10%
Extraordinary safety programs applicable to workplace	-10% to +10%

Qualifications of employees	-25% to +25%
Cooperation with carrier by Management	-10% to +10%
Considerations related to policy expenses	-10% to +10%
Other risk characteristics not addressed above	-25% to +25%

★ **EXCEPTION:** A schedule rating credit is subject to a maximum total of -35% during a government-declared, stay-at-home emergency order. Additional credit can be assigned during the emergency order for the reduction of risk not otherwise contemplated by Manual rules 3:3-25 and -35. This exception shall only apply to policies in-force at any time during the period of such emergency order and, if appropriate, for such limited time thereafter as is necessary for the employer to return to standard business operations, which in no case shall **extend beyond the date established by the Rating Bureau**. This exception is also subject to a maximum combined credit of -35% in accordance with 3:10C-7 of this Manual.

4. Documentation. Adjustments for schedule rating for any given risk shall be based on information contained in the files or records of the carrier when the credit or debit is determined. This supporting information must be retained by the carrier throughout the period of time in which the policy is subject to audit under the provisions of the policy. Upon request of either the insured or the Bureau a carrier shall make documentation available that supports the derivation of any schedule rating credit or debit.

5. Information Page. The amount of any schedule rating premium credit shall be identified on the policy by statistical code 9887 and shown in the Information Page in accordance with 3:3-56 of this Manual. The amount of any schedule rating premium debit shall be identified on the policy by statistical code 9889 and shown in the Information Page in accordance with 3:3-56 of this Manual.

6. Audit. The amount of any schedule rating premium credit or debit is subject to change on audit.

7. Approved Managed Care Program. A risk that agrees to the use of an Approved Managed Care Program is also eligible for the Schedule Rating Plan. In instances where both an Approved Managed Care Program and Schedule Rating are applicable, there is a maximum combined credit of 25% allowable. Credit from the application of both programs totaling greater than 25% is not permissible.

8. Statistical Plan Reporting. The amount of any schedule rating premium credit shall be identified on the statistical report by code 9887 in accordance with 3:13-26(a) of this Manual. The amount of any schedule rating

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subject to the PPAP formula is 20%. If the PPAP formula indicates an adjustment factor greater than 20%, that adjustment factor will be applicable subject to the maximum adjustment factors in 3:14-8(13E). The adjustment factor for qualifying Plan risks that are experience rated will be shown on the experience rating data.

D. PPAP Formula—

1. After the calculation of the experience modification factor (M) for the qualifying risks (risks with expected losses of \$10,000 or greater in their experience modification calculation), a weighted ratio (R) is calculated.

$$R = \frac{(0.5 - 0.5W) A_n}{(M)(E_n)} + \frac{(0.5 + 0.5W) A}{(M)(E)}$$

where:

- W** is the excess credibility
- A** is the modified total losses
- A_n** is the modified normal losses
- E** is the total expected losses
- E_n** is the expected normal losses
- M** is the calculated experience modification
- R** is the weighted ratio, limited to 2.0

All values except R are those used in the experience rating modification calculation.

2. If R is greater than 1.0, an adjustment factor (AF) will be calculated using the following formula:

$$R = \frac{(0.08)(E)(R-1)^{1.25}}{(E+3)^{0.5}}$$

where:

- E** is the total expected losses of the particular insured (in thousands), limited to 40.

3. The adjustment factor will be shown on all experience rating forms (ERM-1). The adjustment factor will be applied to standard premium and will be applicable to all policies insuring a risk in the Plan.

E. Maximum Adjustment Factor (Rated Risks) - There are maximum adjustment factors for those risks that are subject to the PPAP formula in 3:14-8 (13D) of this Manual.

Maximum adjustment factors are applied on the basis of expected losses in the experience rating modification calculation. The following table shows maximum adjustment factors by expected loss size.

Risk Expected Losses	Maximum Adjustments
10,000-24,999	25%
25,000-39,999	30%
40,000 and over	35%

1. **Weighted Ratio—A** comparison of the modified losses to the expected losses. A ratio greater than 1.00 is subject to the PPAP. This ratio is limited to 2.00.
2. **PPAP Adjustment Factor—**The factor is applied to the standard premium. This factor is determined by the formula in D-2 using the weighted ratio in D-1.

- ★ F. **PPAP Adjustment Factor During Government Emergency Order** — A 10-point reduction of the adjustment factor is permitted during a government-declared, stay-at-home emergency order, and is to be assigned to employers that have been adversely impacted by the emergency order and have not otherwise realized a premium reduction in accordance with Manual rules 3:3-25(e) and 3:3-35(e). This exception shall only apply to policies in-force at any time during the period of such emergency order and, if appropriate, for such limited time thereafter as is necessary for the employer to return to standard business operations, which in no case shall **extend beyond the date established by the Rating Bureau.**

- (14) If the insurance company desires to be relieved of the continuing obligation to insure the employer, it shall notify the Rating Bureau, in writing, not less than sixty days before expiration. Upon review and approval by the Rating Bureau in accordance with this rule, the Rating Bureau shall relieve the insurance company of its obligation and shall designate another insurance company to provide the renewal insurance in accordance with paragraph 3.

Individual carrier requests for relief shall not exceed 3% of the total annual residual market policy count for the carrier making such request, as determined by the Rating Bureau on January 1st of each year.

Upon receipt by the newly designated carrier of the renewal deposit premium, the carrier may provide the employer with a Coverage Request Form to be fully completed, executed and returned within thirty days. Upon receipt, the carrier shall then file a copy of the Coverage Request Form with the Rating Bureau.

Failure by the employer to comply with the provisions contained herein will result in carrier notification to the Rating Bureau. The Rating Bureau will then notify the employer and producer, if any, in writing, advising that failure to provide the required Coverage Request Form within ten days will constitute grounds for cancellation of the coverage for non-compliance. If, after the issuance of cancellation in accordance with this paragraph, the employer submits the required Coverage Request Form, the insurance company shall:

- (a) Reinstate the insurance, without lapse, if the Coverage Request Form is received before the effective date of cancellation, or
- (b) If the Coverage Request Form is received within thirty days after the effective date of cancellation, short term insurance shall be