



**B U L L E T I N**

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**R.C. 2224**

**To: The Members of the Board**

**RE: New York Workers Compensation & Employers Liability Manual  
Application of FELA for Railroad Construction risks  
Issue Date: April 1, 2010**

In accordance with the authorization of the New York Compensation Insurance Rating Board's Underwriting Committee, and approval by the New York State Insurance Department, amendments are being issued to the New York Workers Compensation and Employers Liability Manual pages regarding clarifying language for classification code 7855 and its reference to Federal Employers' Liability Act (FELA) coverage. These changes have an issue date of April 1, 2010.

Currently the NY WC & EL Manual specifies that insureds operating with Classification Code 7855 (Railroad Construction and Maintenance) are required to obtain and carry FELA coverage. However, the intent of this directive is only for those insureds who operate on an interstate basis. Recently, it was determined that there are New York State only railroad operations that are indicating FELA coverage. In these instances the coverage should not be mandated and automatically applied to the policy. As a result, the Rating Board has amended certain pages and endorsement footnotes, in the NY WC & EL Manual, to reflect the required clarifications. These changes are consistent with those changes adopted by the National Council on Compensation Insurance (NCCI) for applicability in their jurisdictions.

Attached are the amended NY WC & EL Manual pages, which are summarized below:

- Amended language of the footnote that pertains to Railroad Construction on Page C-69 of the Manual to specify the requirement is for interstate risks and not required for intrastate only employers.
- Correction to Rule XIII 3.a., Page R-86 of the Manual, showing version A for endorsement WC 00 01 04 is applicable.
- Correction (deletion of language) to Note #1 of endorsement WC 00 01 04A "Federal Employers' Liability Act Coverage Endorsement."

These amendments are also included in an updated version of the New York Workers Compensation & Employers Liability Manual which is available via our website at: [www.nycirb.org](http://www.nycirb.org).

Very truly yours,

Monte Almer

President

WVT:tg  
Encl.

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<b>RADIATOR MFG—AUTOMOBILE</b>	<b>3807</b>
<i>Shall not be assigned to a risk engaged in operations described by another classification unless the operations subject to Code 3807 are conducted as a separate and distinct business.</i>	
<b>RADIATOR or Heater MFG.</b>	<b>3081</b>
<i>Applies to cast iron radiators or heaters.</i>	
<b>RADIO or Television BROADCASTING STATION—ALL EMPLOYEES—&amp; Clerical, Outside Salespersons, Drivers</b>	<b>7610</b>
<i>Includes players, entertainers or musicians. The entire remuneration of all employees shall be included in computing premium, subject, however, to the maximum average weekly wage per employee shown in the "Miscellaneous Values" pages as "Maximum Remuneration."</i>	
<b>RADIO or Television Set INSTALLATION, SERVICE or REPAIR &amp; Drivers</b>	<b>9519</b>
<i>Includes shop or outside employees, incidental parts department employees, erection of antennae. Separately rate electrical wiring as Code 5190. Separately rate tower erection as Code 5040.</i>	
<b>RADIO, Television, Telephone or Telecommunications Device MFG. NOC</b>	<b>3681</b>
<b>RADIO TUBE MFG.</b>	<b>4112</b>
<b>RAG, Bottle, Paper Stock or Rubber DEALER—SECOND-HAND—&amp; Drivers</b>	<b>8264</b>
<i>Shall not be assigned to a risk engaged in operations described by another classification unless the operations subject to Code 8264 are conducted as a separate and distinct business.</i>	
<b>RAILROAD CAR MFG. &amp; Drivers</b>	<b>3881</b>
★	<i>For procedure in connection with "Federal Employers Liability Act" and Voluntary Coverage, see Rule XIII. B.</i>
<b>RAILROAD CONSTRUCTION:</b>	
<b>ALL OPERATIONS &amp; Drivers</b>	<b>6701</b>
<i>Separately rate bridge building, tunneling, laying or relaying of tracks or construction of elevated railroads.</i>	
<b>LAYING or Relaying TRACKS—no work on elevated railroads—&amp; Drivers</b>	<b>7855</b>
<b>MAINTENANCE of way—by contractor—no work on elevated railroads—&amp; Drivers</b>	<b>7855</b>
<b>RAILROAD—ALL EMPLOYEES—&amp; Drivers</b>	<b>7133</b>
<i>Separately rate employees connected with the operation or maintenance of bus lines as Code 8394 or Code 8385.</i>	
<b>RATTAN, Willow or Twisted Fiber PRODUCTS MFG.</b>	<b>2913</b>
<i>Includes upholstery.</i>	
<b>RAYON MFG.</b>	<b>2305</b>
<b>RAZOR MFG.—SAFETY</b>	<b>3270</b>
<b>RAZOR MFG. NOC</b>	<b>3122</b>

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## 6. Waters Not Under Admiralty Jurisdiction

### a. Coverage

An insured may conduct operations on waters not subject to admiralty jurisdiction. Insurance for such operations shall be provided by the Standard Policy and endorsement forms and is subject to the rules which apply to statutory workers compensation insurance. Loss Costs are shown in the manual in Part Three—Loss Costs.

### b. Premium Determination

The admiralty classifications and loss costs for Program II apply to operations described in 1. above. Loss Costs are shown in the manual in Part Three—Lost Costs.

### c. Admiralty Law or USL&HW Act Liability

If there is a potential liability under admiralty law, follow the previous rules for insurance under admiralty law. If there is a potential liability under the USL&HW Act, *refer to Rule XII.*

## B. FEDERAL EMPLOYERS' LIABILITY ACT

### 1. General Explanation

The Federal Employers' Liability Act applies to employees of interstate railroads. Such employees are not subject to state workers compensation laws. This federal law imposes liability for damages on the railroad if the injured railroad employee can show any negligence on the part of the railroad. For complete details, see 45 U.S. Code, Sections 51-60, 1970.

### 2. Description of Coverage

In the case of a policy covering a railroad engaged in interstate commerce and subject to the Federal Employers' Liability Act, the premium rates include complete coverage for statutory workers compensation benefits or voluntary compensation coverage for any operation subject to that Act. As respects the liability for the company under Part Two—Employers Liability, the rates provide for a standard limit of \$100,000 for all damages because of bodily injury or death by accident of one or more employees in any one accident. No such policy shall be written with limits less than the standard limits provided above.

### 3. Coverage Endorsements

#### a. FELA Endorsements

★ For employments subject to FELA, the Federal Employers' Liability Act Coverage Endorsement (WC 00 01 04A) shall be attached.

#### b. Voluntary Coverage

If voluntary compensation coverage is to be afforded, the Voluntary Compensation and Employers Liability Coverage Endorsement (WC 00 03 11A) shall be attached to the policy.

