

COMPENSATION RATING AND INSPECTION BUREAU
STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE
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February 15, 2000

MANUAL AMENDMENT BULLETIN # 407

To All Bureau Members and Subscribers:

Re: Sole Proprietors and Partners

The Commissioner of Banking and Insurance has approved alterations to the Manual to accommodate the passage of Legislation concerning individuals and partners. Chapter 383, PL of 1999, effective April 13, 2000 will permit proprietors and partners to be eligible to receive benefits under the New Jersey Workers' Compensation Law. Specifically, proprietors or partners in any partnership, including partners in a limited liability partnership or members of a limited liability company, may **elect** coverage. Such election must be made at the time the policy is purchased or renewed and must be effective at the inception date of the policy. The Law is applicable on a new and renewal basis as of April 13, 2000.

Coverage cannot be rescinded during the policy term. In the case of partners or members, election of coverage must apply to all of the partners or all of the members. The premiums will be determined in accordance with the rules currently applicable to corporate officers.

A copy of the enabling Legislation is attached as EXHIBIT A. Also attached are the following:

- EXHIBIT B- Notice of Election, Form PP-1
- EXHIBIT C- Endorsement, WC 29 03 07
- EXHIBIT D- Revised Manual Rules
- EXHIBIT E- Application For Designation Of An Insurance Company

With respect to the Notice of Election, every application for new or renewal insurance for entities not operated as corporations must include the Notice shown in EXHIBIT B. A copy of the Notice must be filed with the Rating Bureau and written approval secured before being used. Similarly, with respect to the Endorsement shown in EXHIBIT C, your attention is directed to 3:2-1 of the Manual wherein it is required that a specimen copy must be filed with the Rating Bureau and written approval secured before being placed in use.

The Notice included in the *Application For Designation of An Insurance Company* (APPLICATION) will be provided with the next immediate reprint of the APPLICATION. Other ancillary and/or cosmetic changes consistent with the above also will be included in the new APPLICATION. Until the new APPLICATION is printed, all APPLICATIONS which provide for an effective date of April 13, 2000 or thereafter and are for entities not operated as corporations must include a properly completed facsimile of the Notice shown in EXHIBIT E.

Please be guided accordingly.

Joseph Di Martino
Executive Director

EXHIBIT A LEGISLATION

1. R.S. 34:15-36 is amended to include the following:

¹ self-employed person ~~_____~~, partners of a limited liability partnership, members of a limited liability company or partners of a partnership who actively ~~_____~~ perform services on behalf of the self-employed person's business. The limited liability partnership, limited liability company or the partnership shall be deemed an "employer" of the business. ² limited liability partnership, limited liability company or partnership for purposes of receipt of benefits and payment of premiums pursuant to this chapter. If the business ³ limited liability partnership, limited liability company or partnership elects, when the workers' compensation policy of the business ³ limited liability partnership, limited liability company or partnership is purchased or renewed, to obtain coverage for the person ~~_____~~, the limited liability partner, the limited liability company member or the partner. ² If the business ³ limited liability partnership, limited liability company or partnership elects to obtain coverage for the self-employed person ~~_____~~, ³ limited liability partner, limited liability company member or the partner, the ~~_____~~

~~_____~~ election may only be made at purchase or at renewal and may not be withdrawn during the policy term. ² If the business ³ limited liability partnership, limited liability company or partnership performs services covered under a homeowner's policy or other policies providing comprehensive personal liability insurance for domestic servants, household employees or the dependents thereof, the workers' compensation policy ³ of the business, limited liability partnership, limited liability company or partnership shall have primary responsibility for the payment of benefits. Notwithstanding the provisions of R.S. 34:15-71 and 34:15-72, the business ³ limited liability partnership, limited liability company or partnership shall not be required to purchase a policy unless the business ³ limited liability partnership, limited liability company or partnership is an "employer" of a least one employee as defined in this section who is not a self-employed person ³ limited liability partner, limited liability company member or partner actively performing services on behalf of the business ³ limited liability partnership, limited liability company or partnership. ¹

² Notwithstanding any other provision of law to the contrary, no insurer or insurance producer as defined in section 2 of P.L. 1987, c. 293 (C.17:22A-2) shall be liable in an action for damages on account of the failure of a business ³ limited liability partnership, limited liability company or partnership to elect to obtain workers' compensation coverage for a self-employed person ³ limited liability partner, limited liability company member or partner, unless the insurer or insurance producer causes damage by a willful, wanton or grossly negligent act of commission or omission. Every ~~_____~~ application ³ for workers' compensation ~~_____~~ made on or after the effective date of this amendatory act shall include notice ~~_____~~, as approved by the Commissioner of Banking and Insurance ~~_____~~, concerning the availability of workers' compensation coverage for self-employed persons ³ limited liability partner, limited liability company member or partner. That ~~_____~~ application shall also contain a notice of election of coverage and shall clearly state that coverage for self-employed persons ³ limited liability partner, limited liability company member and partner shall not be provided under the policy unless the ³ application containing the ³ notice of election is executed and filed with the insurer or insurance producer. The ³ application containing the ³ notice of election shall also contain a statement that the insurer or insurance producer shall not be liable in an action for damages on account of the failure of a business ³ limited liability partnership, limited liability company or partnership to elect to obtain workers' compensation coverage for a self-employed person ³ limited liability partner, limited liability company member or partner, unless the insurer or insurance producer causes damage by a willful, wanton or grossly negligent act of commission or omission. ² ³ The failure of a self-employed person, limited liability partnership, limited liability company or partnership to elect to obtain workers' compensation coverage for the self-employed person, the limited liability partner, the limited liability company member or the partner shall not affect benefits available under any other accident or health policy. ³

2. This act shall take effect on the ~~_____~~ 90th ~~_____~~ day following enactment and apply to all policies issued on or after that date.

EXHIBIT B

Part Three
Section 2
Page 74

FORM PP-1

NEW JERSEY
NOTICE OF ELECTION- PROPRIETORS AND PARTNERS
WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE

The New Jersey Workers' Compensation Law was amended effective April 13, 2000. The amendment permits **election** by a self-employed person or partners of any partnership including partners of a limited liability partnership and members of a limited liability company actively performing services on behalf of the business to be deemed employees for the purpose of receipt of benefits and the payment of premiums. This election does not affect the insurance obligations for employees other than the self-employed person, partners or members.

The election must be made at the time the policy is purchased or renewed and must be effective at the inception date of the policy. It is important to note that the election cannot be rescinded during the policy period and that in the case of any partnership including a limited liability partnership or limited liability company, **ALL** of the partners or **ALL** of the members must elect the coverage. You will be required to pay a premium based on the remuneration and duties of the self-employed person or each partner or each member.

The insurer or insurance producer shall not be liable in an action for damages on account of the failure of a business, limited liability partnership, limited liability company or partnership to elect to obtain workers' compensation coverage for a self-employed person, limited liability partner, limited liability company member or partner, unless the insurer or insurance producer causes damage by a willful, wanton or grossly negligent act of commission or omission.

To elect coverage, it will be necessary to complete ALL of the information requested below. This completed form must then be returned. A copy of this Notice and proof of mailing should be retained for your records.

NAME OF BUSINESS _____

COVERAGE IS ELECTED _____ **COVERAGE IS REJECTED** _____ **BUSINESS IS A CORPORATION or**
OTHER FORM OF ORGANIZATION _____

Name(s) of Proprietor or ALL Partners (please print)	Estimated Annual Wage	Duties
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- | | | |
|----------|-------|-------|
| 1. _____ | _____ | _____ |
| 2. _____ | _____ | _____ |
| 3. _____ | _____ | _____ |
| 4. _____ | _____ | _____ |
| 5. _____ | _____ | _____ |
| 6. _____ | _____ | _____ |

Signature: _____
Proprietor or a Partner

Date: _____

EXHIBIT C

Part 3
Section 2
Page 29(d)

WC 29 03 07

NEW JERSEY SOLE PROPRIETORS AND PARTNERS COVERAGE ENDORSEMENT

An election was made by the individual proprietor or all partners actively performing services for this business to be deemed to be employees for the purpose of receipt of benefits under the New Jersey Workers Compensation Law. The premium for this policy will include the remuneration of the individual proprietor, all partners in any partnership, including all partners in a limited liability partnership or all members in a limited liability company. The premium shall be determined in accordance with Part Five A – “Premium”, in this policy.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective	Policy No.	Endorsement No.
Insured		Premium \$
Insurance Company	Countersigned by _____	

Note:

1. To be attached to a policy affording coverage under the New Jersey Workers' Compensation Law for individual proprietors or partners in any partnership where the business has elected such coverage.

EXHIBIT D MANUAL RULES

Amend 3:3-43 & 44 as follows:

PRESENT

43. Individual Employers and Partnerships. The New Jersey Workers' Compensation Law does not provide any means, by election or otherwise, by which individual employers or partners can be brought under the provisions of the Workers' Compensation Law as employees. The remuneration of individual employers and partners shall not, therefore, be included in the payroll upon which premium is determined.

44. Limited Partnership Associations and Limited Liability Companies. Limited Partnership Associations organized under R.S.N.J. 42:3-1 and Limited Liability Companies organized under N.J.S.A. 42:2B-1 shall be considered as corporations. For purposes of premium, active managers shall be treated as executive officers as provided in 3:3-39 through 41 of this Manual.

Members, other than managers who provide service for financial consideration shall be treated as employees and their actual wages shall be included in the basis of premium.

PROPOSED

43. Individual Employers and Partnerships. The New Jersey Workers' Compensation Law permits election, by which an individual proprietor or all partners of any partnership including all partners of a limited liability partnership and all members of a limited liability company may be considered employees for the purpose of receipt of benefits and payment of premiums. All partners or all members must agree to the election.

This election does not affect the insurance obligations for employees other than the sole proprietor, partners or members.

The election must be made at the time the policy is purchased or renewed and must be effective at the inception date of the policy. The election cannot be rescinded during the policy period.

Insurers must provide the Notice of Election, Form PP-1, included in 3:2, page 74 of this Manual with each application for new or renewal coverage for entities not operated as corporations. Where election has been made, the policy shall include the New Jersey Sole Proprietors and Partners Coverage Endorsement, WC 29 03 07.

Where coverage has been elected, the remuneration of the individual proprietor or all partners or all members who provide service for financial consideration shall be included in the payroll upon which the policy premium is determined. For purposes of premium determination, such individuals, partners and members shall be treated in the same manner as corporate officers as provided in 3:3-39 through 41 of this Manual.

Where coverage has not been elected, the remuneration of the individual proprietor, partners or members shall not be included in the payroll upon which the policy premium is determined.

44. DELETE

Reserved For Future Use

EXHIBIT E

Amend 3:14 to include the following Notice as page 8a - Application for Designation of an Insurance Company:

ACORD NEW JERSEY WORKERS COMPENSATION INSURANCE PLAN DATE
PROPRIETORS and PARTNERS SUPPLEMENTAL NOTICE OF ELECTION

NOTICE OF ELECTION- PROPRIETORS AND PARTNERS

This Notice must be completed if any entity is operated as a proprietorship or any type of partnership including a limited liability partnership or limited liability company.

The New Jersey Workers' Compensation Law was amended effective April 13, 2000. The amendment permits **election** by a self-employed person or partners of any partnership including partners of a limited liability partnership and members of a limited liability company actively performing services on behalf of the business to be deemed employees for the purpose of receipt of benefits and the payment of premiums. This election does not affect the insurance obligations for employees other than the self-employed person, partners or members.

This election must be made at the time the policy is purchased or renewed and must be effective at the inception date of the policy. It is important to note that the election cannot be rescinded during the policy period and that in the case of any partnership including a limited liability partnership or limited liability company, **ALL** of the partners or **ALL** of the members must elect the coverage. You will be required to pay a premium based on the remuneration and duties of the self-employed person or each partner or each member.

The insurer or insurance producer shall not be liable in an action for damages on account of the failure of a business, limited liability partnership, limited liability company or partnership to elect to obtain workers' compensation coverage for a self-employed person, limited liability partner, limited liability company member or partner, unless the insurer or insurance producer causes damage by a willful, wanton or grossly negligent act of commission or omission.

To elect coverage, it will be necessary to complete all of the information requested below. If the risk operates as a self-employed person or partnership including a limited liability partnership or limited liability company, this supplemental Notice of Election **MUST** be completed and signed by the employer. In such cases, failure to submit a completed and signed supplemental Notice of Election will result in the return of your Application for the designation of an insurance carrier.

COVERAGE IS ELECTED COVERAGE IS REJECTED

Name(s) of Proprietor or ALL Partners (please print)	Estimated Annual Wage	Duties
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____

Signature: _____
Proprietor or a Partner

Date: _____