

BULLETIN

Empire State Agricultural Compensation Trust

October 2007

CORPORATION – EXECUTIVE OFFICER EXCLUSION

Section 54, Subdivision 6a of the New York State Workers' Compensation Law states every executive officer of a corporation shall be deemed to be included in the compensation insurance contract or covered under a certificate of self-insurance. Subdivisions 6b through 6e does permit a corporation the option to exclude Workers' Compensation benefits for its executive officers under the following circumstances:

- (1) The corporation must have only one or two executive officers, regardless of whether such officers are active or inactive;
- (2) the officer or the two officers collectively must at all times own all of the issued and outstanding stock of such corporation and each officer must own at least one share in the corporation; and
- (3) all officers must hold all the offices pursuant to paragraph (e) of Section 715 of the Business Corporation Law

If your corporation meets the conditions listed above:

- (a) And your corporation does not employ any other persons besides executive officers, the corporation at its option may cancel its policy, provided there are no other entities with employees covered under the policy. To cancel your policy, check box A and sign your name on the enclosed form.
- (b) and your corporation does not employ any other persons besides executive officers, but there is another entity with employees covered under the policy, the policy must be maintained. The executive officer(s), however, may delete coverage for this corporation (and therefore eliminate coverage and premium for the corporation's officers). To delete coverage for the corporation, check box B and sign the enclosed form.
- (c) but your corporation employs persons besides one or two executive officers, the corporation can choose to exclude coverage for the executive officers(s). Complete and return the enclosed form U-619 (C-105.51). If there are two executive officers, both officers must sign the form.

No corporate officers may be excluded if the corporation has more than two executive officers or more than two shareholders or where the two corporate officers do not own all the shares of stock (each owning at least one share).

New York State Workers' Compensation Rule IX describes the assignment of payroll and the premium determination for executive officers.

The assignment of an executive officer's payroll is determined by the primary duties and frequency of the duties performed. If the executive officer primarily performs the same or similar duties as the employee, the executive officer's payroll falls under the same classification as the employee. If the duties are executive, clerical or supervisory in nature an 8809 Clerical class code may be used.

Effective October 1, 2007, the premium is based on the executive officer's annual payroll subject to a minimum of \$28,600 and maximum of \$84,500. Inactive executive officers shall be included at the fixed amount of \$100 payroll per year.