

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF SOLVENCY REGULATION

State College Risk Management Groups

Proposed New Rules: N.J.A.C. 11:15-7

Authorized By: Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 18A:64-86 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2011-169.

Submit comments by September 30, 2011 to:

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The agency proposal follows:

Summary

P.L. 2010, c. 99 permits two or more State colleges to establish a State college risk management group (group) for the purpose of insuring against liability, property damage and workers'

compensation. The goal of this statute is to reduce insurance costs to State colleges by permitting them to pool risks.

The statute provides the requirements for the establishment and operation of risk management groups and authorizes the Commissioner of Banking and Insurance (Commissioner) to review and approve the bylaws and promulgate rules governing the establishment, operation, modification and dissolution of State college groups comparable to the authority the Commissioner has with respect to the oversight of local unit and school board joint insurance funds formed pursuant to N.J.S.A. 40A:10-36 et seq. and 18A:18B-1 et seq.

In order to implement N.J.S.A. 18A:64-86, the Department of Banking and Insurance (Department) proposes these new rules setting forth the filing and operational requirements for State college groups providing property and liability coverages. These proposed rules are substantially similar to N.J.A.C. 11:15-4, which pertains to joint insurance funds formed by school boards to provide property/casualty coverage, since the general structure and purpose of these school board joint insurance funds and State college groups are substantially similar.

The proposed rules require that State college groups file specified information as well as comply with specified operational guidelines. The proposed rules, therefore, provide a regulatory framework by which the Department may ensure that these groups are operating in compliance with P.L. 2010, c. 99 and by which it may assess the financial condition and viability of these groups, thus lessening the likelihood of group insolvencies. This, in turn, protects the interests of claimants and tuition payers.

Proposed N.J.A.C. 11:15-7.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:15-7.2 sets forth the definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:15-7.3 provides the requirements for the agreement to join a risk

management group.

Proposed N.J.A.C. 11:15-7.4 sets forth general operational requirements for these risk management groups.

Proposed N.J.A.C. 11:15-7.5 sets forth the filing requirements for the bylaws and risk management program.

Proposed N.J.A.C. 11:15-7.6 sets forth the required contents of the bylaws and risk management program.

Proposed N.J.A.C. 11:15-7.7 provides the guidelines for the disapproval of the bylaws and risk management program.

Proposed N.J.A.C. 11:15-7.8 provides the guidelines for the revocation of approval of the bylaws and risk management program.

Proposed N.J.A.C. 11:15-7.9 provides for the approval of non-members.

Proposed N.J.A.C. 11:15-7.10 provides for the termination and/or withdrawal of group members.

Proposed N.J.A.C. 11:15-7.11 provides for the insolvency and/or bankruptcy of group members.

Proposed N.J.A.C. 11:15-7.12 provides for the voluntary dissolution of a group.

Proposed N.J.A.C. 11:15-7.13 describes the establishment of trust fund accounts and the requirements for transfer or withdrawal of funds.

Proposed N.J.A.C. 11:15-7.14 requires the establishment of an administrative account utilized for payment of general operation expenses.

Proposed N.J.A.C. 11:15-7.15 provides guidelines for the assessments on members of the risk management group.

Proposed N.J.A.C. 11:15-7.16 provides guidelines for supplemental assessments on members of the risk management group.

Proposed N.J.A.C. 11:15-7.17 requires that the group notify the Commissioner if a member fails or refuses to provide the required assessments.

Proposed N.J.A.C. 11:15-7.18 describes individual loss reserve funds.

Proposed N.J.A.C. 11:15-7.19 provides for the certification of funds.

Proposed N.J.A.C. 11:15-7.20 sets forth the requirements for investments and application of investment income.

Proposed N.J.A.C. 11:15-7.21 sets forth requirements for refunds and interyear fund transfers.

Proposed N.J.A.C. 11:15-7.22 provides for disbursements and/or payment of claims.

Proposed N.J.A.C. 11:15-7.23 sets forth the requirements for excess insurance and/or reinsurance and approval of waivers for this requirement.

Proposed N.J.A.C. 11:15-7.24 requires the filing of financial statements and reports.

Proposed N.J.A.C. 11:15-7.25 requires the examination of risk management groups to determine compliance with applicable laws; and requires examinations of risk management groups which are insolvent or in a financial condition detrimental to the public.

Proposed N.J.A.C. 11:15-7.26 sets forth guidelines for servicing organizations or administrators of risk management groups.

Proposed N.J.A.C. 11:15-7.27 provides for notice and opportunity for a hearing on any proposed suspension, revocation, cease and desist order, assessment or other enforcement action.

Proposed N.J.A.C. 11:15-7.28 provides for the issuance of orders by the Commissioner.

Proposed N.J.A.C. 11:15-7.29 sets forth the compliance dates for this subchapter.

Proposed N.J.A.C. 11:15-7.30 provides that if any section of this subchapter is held invalid, the remaining parts are not to be affected.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The primary impact of the proposed new rules is that State college risk management groups will be required to file the specified information with the Department and operate in compliance with the managerial guidelines set forth in the proposed new rules. As noted in the proposal Summary above, the general formation and operational requirements are substantially similar to those for school board joint insurance funds providing property/casualty coverages, and reflect and codify these general requirements. The Department believes that by maintaining essentially the same basic regulatory framework applicable to school board joint insurance funds, State college risk management groups will be afforded uniformity, consistency, and the flexibility to operate in a cost-effective manner.

Risk management groups will benefit in that these filing and operational requirements have proven effective and workable and their implementation will ensure consistency in the review of the documents submitted and in the approval of the bylaws and risk management programs of the groups.

Economic Impact

The proposed new rules will enable the Department to effectively monitor the financial con-

dition and operations of risk management groups formed by State colleges to provide property/casualty coverages, and thereby protect the interests of claimants and the public and tuition payers. Further, by establishing the mechanism for the formation of these groups, State colleges may better stabilize insurance costs and may experience premium savings. These savings may ultimately benefit the public taxpayers and tuition payers.

Risk management groups (and ultimately State college members thereof) will be required to bear the costs associated with generating and filing the information required as well as any costs associated with operating the group in compliance with the proposed new rules. In addition, a risk management group will be required to bear the cost of any examination of its books, records, and affairs conducted in order to ensure compliance with N.J.S.A. 18A:64-86 et seq. The types of professional services needed to comply with the proposed rules include accounting, actuarial and administrative. State college groups may be required to hire or contract for such services and bear costs related thereto.

The purpose of the rules is to help ensure that these groups are operated in conformance with N.J.S.A. 18A:64-86 et seq., including the requirement that the joint liability funds established by the group are developed and operated in accordance with sound actuarial principles. The goal of the rules is to provide a regulatory framework by which groups are operated in a sound actuarial manner and will be in a position to pay claims when due. Accordingly, the benefits realized from the regulatory framework provided by the proposed rules outweigh any costs to these groups or their members.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not subject

to any Federal requirements or standards.

Jobs Impact

The Department believes that any impact on jobs is speculative. To the extent that State colleges, through the formation of groups, experience efficiencies and a stabilization of their costs for insurance coverages, corresponding costs to State colleges, and ultimately tuition payers and taxpayers, may be stabilized. This, in turn, could contribute to a healthy business climate in New Jersey.

The Department invites commenters to submit any data or studies concerning the jobs impact of these proposed rules together with their written comments on other aspects of the proposal.

Agriculture Industry Impact

The proposed new rules will not have an impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

These proposed new rules do not directly impose reporting, recordkeeping or other compliance requirements on small businesses. The proposed new rules directly apply to State college risk management groups composed of member State colleges. These entities do not meet the definition of “small business” as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

However, the Department notes that the proposed rules will indirectly impose reporting, recordkeeping, or other compliance requirements on other entities that have contracted with the group to provide specified services. The rules require that the custodians of funds, servicing organizations and group administrators report to the group trustees and the Commissioner on various ac-

tivities related to the services they are retained to perform. Specifically, the custodian of funds must report to the trustees at least quarterly on investment and interest income; the custodian of funds must notify the Commissioner in writing of the failure of any group member(s) to pay any supplemental assessment, if the trustees or chairman of the board of trustees fails to do so; the custodian of funds shall certify the availability of sufficient unencumbered funds in the applicable account to fully pay all charges or commitments prior to paying any such charge or commitment; and group administrators or servicing organizations acting as a “certifying and approving officer” must certify the amount and particulars of the approved claims, prepare a detailed report of the nature and amount of such claims, and submit same to the board of trustees, and record payments in a claims register maintained by the custodian. In addition, servicing organizations and producers must disclose to the trustees any financial interest of their employees, directors or officers in any group administrator; and administrators must disclose any such interest in any servicing organization or producer. See N.J.A.C. 11:15-7.4, 7.17, 7.19, 7.22 and 7.26). The Department believes that virtually all of these entities would meet the definition of “small business” as defined in N.J.S.A. 52:14B-16 et seq. Accordingly, these small businesses will be required to bear any costs involved in complying with the requirements set forth in these rules, which costs should be addressed in their respective contract for providing services to the group.

For the reasons that follow, the Department does not believe that these requirements will impose any undue burden on these entities or that different reporting, recordkeeping and compliance requirements would be feasible or appropriate. These entities will contract with a risk management group to provide specified services. The information required to be reported is intended to ensure that the group, which is comprised of member State colleges, and, where applicable, the

Commissioner, are fully apprised of the status of certain information and of the various services being provided. The information required to be reported should be readily available, and indeed would undoubtedly be required by the group itself in the absence of specific regulatory requirements by the Department. Finally, any costs to the entity would be reflected in the compensation provisions voluntarily entered into between the entity and the group.

Therefore, for the reasons discussed above, and to ensure consistency and uniformity in the data reported to risk management groups and the Commissioner, no differentiation in compliance requirements is provided based on business size.

Smart Growth Impact

The proposed new rules will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact Analysis

The proposed new rules will not have an impact on housing affordability in this State in that the proposed new rules relate to the regulation of State college risk management groups.

Smart Growth Development Impact Analysis

The proposed new rules will not have an impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in Planning Areas 1 or 2 or within designated centers under the State development and Redevelopment Plan in New Jersey in that the proposed new rules relate to the regulation of State college risk management groups.

Full text of the proposed new rules follows:

SUBCHAPTER 7. STATE COLLEGE RISK MANAGEMENT GROUPS

11:15-7.1 Purpose and scope

(a) The subchapter sets forth the filing requirements and approval procedures for joint liability funds established by State college risk management groups and for such groups established pursuant to N.J.S.A. 18A:64-86 et seq.

(b) This subchapter applies to all State college joint liability funds established by State college risk management groups and to such groups established pursuant to N.J.S.A. 18A:64-86 et seq.

11:15-7.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Actuary” means a person who is a Fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an Associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

"Administrator" means a person, partnership, corporation or other legal entity engaged by the board of trustees, as defined in this section, to act as executive director to carry out the policies established by the board of trustees and to otherwise administer and provide day-to-day management of the risk management group. The administrator may also be the lead agency, an employee of the group, a group member, or an independent contractor.

"Automobile and equipment liability" means liability resulting from the use of or operation of motor vehicles, equipment or apparatus owned by or controlled by the member.

"Board of trustees" or "trustees" means the board of trustees established pursuant to the by-laws of the State college risk management group to govern or manage the risk management programs, joint liability funds, and related services of the group.

"Certified audit" means an audit upon which an auditor expresses a professional opinion that the accompanying statements present fairly the financial position of a joint liability fund in conformity with generally accepted accounting principles consistently applied, and includes tests of the accounting records and other auditing procedures as considered necessary in the circumstances.

"Chairman" means the chairman of the board of trustees as may be elected or designated by the trustees.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Contributions" means the moneys paid by a member of a State college risk management group in amounts as may be set by the board of trustees or other officers as provided in the group's bylaws for the purposes of participating in a joint liability fund or funds, or securing risk management programs or related services.

"Department" means the New Jersey Department of Banking and Insurance.

"Employers' liability" means the legal liability of a public employer to pay damages because of bodily injury or death by accident or disease at any time resulting therefrom sustained by an employee arising out of and in the course of his or her employment by the employer, which is not covered by a workers' compensation law.

"Excess carrier" means an insurer that provides excess insurance or reinsurance to a group.

"Excess insurance" means insurance, purchased from an insurance company authorized or admitted in the State of New Jersey or deemed eligible by the Commissioner as a surplus lines in-

surer, covering losses in excess of an amount established between the risk management group and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence, per accident, or annual aggregate basis.

"Fiscal year" or "fund year" means the fiscal year July 1 through June 30.

"General liability" means any and all liability which may be insured under the laws of the State of New Jersey, excluding workers' compensation and employers' liability.

"Hazardous financial condition" means that, based on its present or reasonably anticipated financial conditions, a group, although not yet financially impaired or insolvent, is unlikely to be able:

1. To meet obligations to claimants with respect to known claims and reasonably anticipated claims; or
2. To pay other obligations in the normal course of business.

"Indemnity and trust agreement" means a written contract signed by the members of the risk management group under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement arising from their participation in the group.

"Insolvent group" means a risk management group which has been determined by a court of competent jurisdiction to be unable to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it, or for which, or for the assets of which, a receiver or liquidator, however entitled, has been appointed by a court of competent jurisdiction and authority, after the effective date of this subchapter.

"Insurer" means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes.

"Intertrust fund transfer" means an actual transfer of funds from one claim or loss retention fund account in a fiscal year to another account within the same fiscal year.

"Interyear fund transfer" means the transfer of funds from a claim or loss retention trust account for a fiscal year, to a claim or loss retention trust account of similar risk or liability for a different fiscal year.

"Joint insurance funds" or "JIFs," as used in the chapter Appendix, shall be deemed to refer to State college risk management groups for purposes of their application to this subchapter.

"Joint liability fund" or "fund" means a fund of public moneys from contributions made by members of a State college risk management group for the purpose of securing insurance protection, risk management programs, or related services as authorized by N.J.S.A. 18A:64-86 et seq.

"Member" means a State college which is a member of a State college risk management group.

"Net current surplus" or "surplus" means that amount of monies in a trust account established pursuant to N.J.A.C. 11:15-7.6(c)10 that is in excess of all costs, earned investment income, refunds made pursuant to N.J.A.C. 11:15-7.21, incurred losses and loss adjustment expenses and incurred but not reported reserves, including the associated loss adjustment expenses attributed to the fund net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular year.

"Producer" means any person engaged in the business of an insurance agent, insurance broker, or insurance consultant as defined in N.J.S.A. 17:22A-26 et seq.

"Property damage" means any loss or damage, however caused, on or to property, motor vehicles, equipment or apparatus owned by a member.

"Risk management program" means a plan and activities carried out under the plan, by a State college risk management group to reduce risk of loss with respect to liabilities incurred by member State colleges, including safety engineering and other loss prevention and control techniques. Risk management program also includes the administration of one or more funds, including the processing and defense of claims brought against or on behalf of members of the group.

"Secretary" means the secretary of the risk management group's board of trustees as may be designated by the trustees.

"Servicing organization" means an individual, partnership, association or corporation, other than the administrator, that has contracted with the group to provide, on the group's behalf, any function as designated by the trustees including, but not limited to, actuarial services, claims administration, cost containment services, loss prevention/safety engineering services, legal services, auditing services, financial services, compilation and maintenance of the group's underwriting file, coordination and preparation of coverage documents, risk selection and pricing, excess insurance or reinsurance producer services, which include producer negotiations on behalf of the group for excess insurance or reinsurance from an insurer, member assessment and fee development, report preparation pursuant to N.J.S.A. 18A:64-86 et seq. and this subchapter, and such other duties as designated by the group.

"State college" means any of the State colleges or universities established pursuant to N.J.S.A. 18A:64-1 et seq.

"State college risk management group," "risk management group" or "group" means an association formed by two or more State colleges for the development, administration, and provision

of risk management programs; joint liability funds for the payment of liabilities incurred by the State colleges and not funded by the State of New Jersey pursuant to the provisions of the "New Jersey Tort Claims Act," N.J.S.A. 59:1-1 et seq.; and related services.

"Trustees" means the board of trustees established pursuant to the bylaws of the risk management group to govern or manage the risk management programs, joint liability fund or funds and related services of the group.

"Unpaid claims" or "unpaid losses" means case reserves and reserves for incurred but not reported claims attributed to the group net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular year.

"Workers' compensation law" means the provisions of N.J.S.A. 34:15-7 et seq.

11:15-7.3 Agreement to join risk management group; duration

(a) Any two or more State colleges may form or become members of a State college risk management group. A State college may take this action by resolution of the board of trustees of the State college.

(b) The resolution shall provide for execution of a written agreement with the group specifically conditioning membership on acceptance and adoption of the group's bylaws. The agreement shall specify the extent of the member's participation in the group with respect to the types of insurance coverage to be provided by the group and shall include the duration of group membership if applicable. The agreement shall specify that the group members have not been cancelled for non-payment of insurance premiums for a period of at least two years prior to application. Members may renew their participation by the execution of a new agreement to join the risk management group. In lieu of filing copies of the new agreement and indemnity and trust agreement referred to

in N.J.A.C. 11:15-7.6(c)10 for each member's renewal of membership, the group shall file a notice with the Department which sets forth the members that have renewed membership and the respective durations of such membership renewal, as well as the members that have not rejoined.

(c) A risk management group formed pursuant to N.J.S.A. 18A:64-86 et seq. and this subchapter shall have the power to insure, contract or provide for any insurable interest of the member solely for the following:

1. Any loss or damage to the member's property, real or personal, motor vehicles, equipment or apparatus;
2. Any loss or damage from liability as established by the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.;
3. Loss or damage from liability as established by N.J.S.A. 34:15-1 et seq.; and
4. Expenses of defending any claim against the State college, trustee, officer, employee or servant arising out of and in the course of performance of their duties, whether or not liability exists on the claim, not eligible for defense and indemnification by the State of New Jersey in accordance with the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq.

11:15-7.4 General requirements

(a) Every risk management group shall be subject to and operate in compliance with the provisions of any applicable law governing contracts by State colleges and the applicable regulations of the State Investment Council governing the investment of surplus public monies of the State.

(b) All monies, assessments, funds and other assets of a risk management group shall be under the exclusive control of its board of trustees.

(c) A risk management group shall be governed by any applicable law in the purchase of any goods, materials, supplies and services.

(d) Each risk management group shall adopt a resolution designating a public depository or depositories for its monies. Such resolution shall also designate a person to be custodian of funds for the risk management group and shall authorize the custodian to invest the temporarily free balances of any claim/trust or administrative accounts periodically as authorized by law. The custodian shall report to the trustees at least quarterly on investment and interest income.

(e) The trustees shall annually prepare not later than the time required by law for the preparation of the budget for State colleges, the proposed budget for the group's subsequent fiscal year. The budget shall identify the proposed items and amounts of expenditure for its operations in the aggregate and allocated by member; the anticipated amounts and sources of assessments and other income to be received during the fiscal year; and the status of the self-insurance or loss retention trust accounts maintained by the risk management group. The budget shall be prepared on a basis that does not recognize investment income or discounting of claim reserves, but recognizes all anticipated or forecasted losses and administrative expenses associated with that fiscal year.

1. A copy of the group's proposed budget or any amendments thereto shall be made available to each member of the risk management group at least two weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a hearing has been held giving all members of the risk management group the opportunity to present comments or objections.

2. Not later than June 30 of each year, the trustees shall adopt by majority vote the budget for the group's operations for the subsequent fiscal year.

3. A copy of each adopted budget shall be filed with the governing body of each participating member and the Commissioner within 30 days of its adoption, including a certification by an actuary that the budget is actuarially sound with respect to funding for the claim or loss retention fund accounts.

4. An adopted budget may be amended by majority vote of the membership or majority vote of a quorum of the board of trustees of the risk management group.

5. A copy of any amendment to a group budget shall be filed quarterly with the governing body of each participating member.

6. A copy of any amendment to a group budget shall be filed with the Commissioner within 30 days of adoption of any budget amendment which either singly or cumulatively with other adopted budget amendments changes the total annual budget five percent from the original budget or the latest filed amended budget.

(f) All books, records, files, documents and equipment of the risk management group are the property of the group and, except as provided at N.J.A.C. 11:15-7.22(e), shall be retained by the group administrator or group secretary, if any, at the discretion of the board of trustees.

1. All claims information for a particular fund year and all financial information shall be retained for a period not less than the longer of either:

i. For financial information, seven years from the date of the document's creation; for claims information, seven years after all claims for that year have been fully paid; or

ii. Until the completion and filing of the next financial condition examination of the group by the Commissioner.

(g) Each group shall maintain written minutes of its meetings and shall file such approved, ratified and adopted minutes with the Commissioner within 30 days after such minutes are approved, ratified and adopted.

(h) A risk management group shall provide its members with periodic reports covering the activities and status of the group for the reporting period. Such reports shall be made at least quarterly and may be made more frequently at the discretion of the trustees and shall include, but not be limited to, the minutes, the trustee's or group administrator's report and a summation of group activity, including comments on previously reported claims and newly reported claims, and any other information required by the trustees, but excluding any closed session minutes of portions of a meeting as provided in N.J.S.A. 10:4-12b. The Department may require that such reports be submitted to the Department if it is deemed necessary to ensure compliance with these reporting requirements. Such reports shall also be made available to the Department for review during any examination of the risk management group. The Department may also require that copies of closed session minutes be filed for its review. Copies of closed session minutes filed with the Department shall be held confidential by the Department and shall not be subject to public inspection or copying pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

(i) All officers, employees and agents of the risk management group, including the administrator and servicing organization of the group, on the final day of their contract or employment shall surrender and deliver to their successors all accounts, funds, property, records, books and any other material relating to their contract or employment.

11:15-7.5 Bylaws and risk management program; filing requirements

(a) Each risk management group shall file with the Department for approval by the Commissioner, as provided in N.J.S.A. 18A:64-91, its bylaws and risk management program and any amendments thereto. In addition, in order to ensure that the joint liability funds of State college groups are developed and operated in accordance with sound actuarial principles, the initial filing shall contain and be accompanied by the information and documentation specified at N.J.A.C. 11:15-7.6, and such other information the Commissioner may request. All filings shall be in loose-leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the requirements set forth in N.J.A.C. 11:15-7.6. The loose-leaf sheets used shall be eight and one-half inches wide and 11 inches long and punched for two-ring and three-ring binders, as appropriate. The group shall submit five copies of a filing in the format set forth in this section. All information shall be submitted completely and accurately.

(b) All of the information and documentation set forth in N.J.A.C. 11:15-7.6 shall constitute the group's bylaws and risk management program pursuant to N.J.S.A. 18A:64-89. No risk management group shall begin providing insurance coverage to its members until its bylaws and risk management program, including all of the information required pursuant to N.J.A.C. 11:15-7.6, have been approved by the Commissioner.

(c) No amendment to a group's bylaws or risk management program shall take effect until such amendment is approved by the Commissioner.

(d) Within 10 days following any change in the information or documentation required to accompany the filing of the group's bylaws or amendments thereto, as provided in (a) above, the group shall file notice of the change with the Department.

(e) The bylaws and risk management program and all information required to accompany the initial filing shall set forth an identifying number or code and the filing date on each page of

the specific document filed. For example, each page of the bylaws shall set forth an identifying number or code; each page of the risk management program shall set forth a different identifying number or code; the sample resolution and trust agreement shall set forth a different identifying number or code; etc. Any amendment or supplemental form to any information previously filed shall contain the original identifying number or code, indicate that the document is an amendment or supplement to the information previously filed, and set forth the date of revision.

(f) In addition to the information set forth in N.J.A.C. 11:15-7.6, the group shall provide a cover letter stating the name, telephone number(s), telefax number(s) and email addresses of two contact persons (one primary, one secondary) familiar with the filing to whom the Department may direct any questions, as well as the group's official mailing address for the purpose of disseminating Department information, in accordance with N.J.A.C. 11:1-25.

(g) All information required to be submitted shall be sent to the Department at:

New Jersey Department of Banking and Insurance

Office of Solvency Regulation

Attn: State College Risk Management Group Admissions

20 West State Street

PO Box 325

Trenton, NJ 08625-0325.

11:15-7.6 Bylaws and risk management program; contents

(a) The trustees shall prepare and, after the approval by resolution of the governing body of each participating member, shall adopt bylaws for the risk management group. The bylaws shall:

1. Set forth a statement of purposes of the group;

2. Set forth provisions for organization of the group, including governance by a board of trustees;
3. Provide for the delivery of a risk management program in conjunction with any joint liability fund or funds which the board of trustees shall establish;
4. Set forth procedures to enforce the collection of any contributions or payments in default;
5. Set forth membership standards as required in N.J.S.A. 18A:64-88;
6. Require that, for each joint liability fund, a contract or contracts of specific and aggregate excess insurance or reinsurance is maintained, if available, unless otherwise recommended by the trustees upon the advice and report of an independent actuary, or otherwise required pursuant to N.J.S.A. 18A:64-86 et seq. or this subchapter;
7. Set forth procedures for:
 - i. Withdrawal from the group and a fund by a member, including any requirement that a terminated or withdrawing member provide security in a form and amount acceptable to the Commissioner or trustees, as applicable, as a guarantee for the continued payment of the member's obligations pursuant to N.J.A.C. 11:15-7.10(c);
 - ii. Termination of the group or fund and disposition of assets; and
 - iii. Determining the obligations, if any, of a member in the event that the group is unable to pay indemnification obligations and expenses payable from a fund administered by it;
8. Require an annual certified audit and an actuarial opinion statement on loss reserves pursuant to the Loss Reserve Opinions rules, N.J.A.C. 11:1-21, to be prepared and filed with the Commissioner;

9. Require an annual, supplemental semi-annual, and quarterly financial reporting schedule, as applicable, to be filed pursuant to N.J.A.C. 11:15-7.24;

10. Require that any joint liability fund or funds be developed and operated in accordance with accepted and sound actuarial principles;

11. Provide that any expenditure of moneys in a fund be in furtherance of the purpose of the fund;

12. Provide for expulsion of a member;

13. Provide procedures governing trust fund accounts, including transfers, withdrawals and distribution surplus therefrom and supplemental assessments; and

14. Set forth other provisions as desired for operation and governance of the group.

(b) The bylaws of a risk management group shall provide for governance of the group by a board of trustees selected in accordance with the provisions of the bylaws. The bylaws shall provide for trustee powers and duties and shall include, but not be limited to, the following powers of the board of trustees:

1. To determine and establish contributions and apportionment thereof among members, rates, loss reserves, surplus, limits of coverage, limits of excess insurance or reinsurance, coverage documents, refunds and other financial and operating policies of the group or fund;

2. To invest moneys held in trust under any fund in investments which are approved for investment by regulation of the State Investment Council for surplus public moneys of the State;

3. To purchase, acquire, hold, lease, sell and convey real and personal property, all of which property shall be exempt from taxation under N.J.S.A. 54:4-1 et seq.;

4. To collect and disburse all money due to or payable by the fund, or authorize such collection and disbursement;
5. To enter into contracts with other persons or with public bodies of this State for any professional, administrative or other services as may be necessary to carry out the purposes of the group or any fund;
6. To purchase and serve as the master policyholders, if desired, for any insurance, including excess insurance or reinsurance;
7. To prepare, or cause to be prepared, a risk management program for the group;
8. As the need arises, from time to time, to amend the bylaws and risk management program of the fund pursuant to N.J.S.A. 18A:64-91 and this subchapter; and
9. To do all other things necessary and proper to carry out the purposes for which the fund is established.

(c) In addition, the bylaws shall be accompanied by the following items, information or documentation:

1. The group's name, location of its principal office, date of organization, and name and address of each initial member;
2. A specification of the insurance coverages to be provided by the group and the minimum participation required of any member;
3. A description of the responsibilities and obligations of the members, the terms and conditions of continued participation and discontinuance of participation in the group;

4. A pro forma financial statement, with underlying assumptions and methodology, on a form acceptable to the Commissioner showing the financial strength and liquidity of the group to assure that all obligations will be met promptly;

5. Where self-insured, a plan for specific and aggregate excess insurance or reinsurance, if provided or required, and for retention in accordance with sound actuarial principles and the risk management program;

6. Proof of competent personnel and ample facilities within the group's organization with respect to claims administration, underwriting matters, loss prevention and safety engineering or present a contract with a servicing organization(s) for the provision of such services;

7. The claims handling procedure to be utilized by the group which procedure shall provide for the prompt, fair and equitable settlement of claims;

8. The complaint handling procedure to be utilized by the group;

9. A sample copy of the resolution and written agreement adopted by each participating member as specified at N.J.A.C. 11:15-7.3. Within 30 days of approval by the Commissioner, the group shall send certified copies of the resolution and written agreement from each participant to the Commissioner;

10. A sample copy of its indemnity and trust agreement as defined in N.J.A.C. 11:15-7.2, and in a form satisfactory to the Commissioner.

i. The agreement shall create a trust and govern the operation thereof under which monies shall be held by the trustees as fiduciaries for the benefit of group claimants.

ii. Where a group shall provide for the retention on a self-insured basis of any or all of the risks or liabilities specified below, the agreement shall require and provide for the establishment of separate trust accounts from which monies shall be disbursed solely for the

payment of claims, allocated claims expenses and excess insurance or reinsurance premiums for each risk or liability, and may provide for the establishment of contingency accounts, each by fund year, as follows:

- (1) Workers' compensation and employers' liability;
- (2) Liability, other than motor vehicle;
- (3) Property damage, including automobile physical damage;
- (4) Automobile liability;
- (5) Expenses of defending any claim against the State college,

trustee, officer, employee or servant in accordance with N.J.S.A. 18A:64-87d;

(6) General contingencies, if deemed appropriate by the fund, to replenish the administrative account established pursuant to N.J.A.C. 11:15-7.14 for that specific fund year; and

(7) Loss fund contingencies, if deemed appropriate by the group, to replenish a trust account established pursuant to (c)10ii(1) through (5) above for that specific fund year; and where the total amount of monies assessed and allocated to the accounts established pursuant to (c)10ii(1) through (5) and this sub-subparagraph are utilized to satisfy the amounts estimated by the group's actuary to be necessary to pay claims, allocated claims expenses and excess insurance or reinsurance premiums for each risk or liability set forth in (c)10ii(1) through (5) above for that fund year.

iii. A group shall not be otherwise required to establish separate trust accounts as required by (c)10ii above for each fund year, or for each risk or liability as specified in (c)10ii above, provided the group provides a plan in its bylaws which provides for the recording and

accounting of all transactions by fund year for each risk or liability as specified in (c)10ii above, as applicable.

iv. Within 30 days of approval by the Commissioner, the group shall send certified copies of the indemnity and trust agreement from each participant to the Commissioner;

11. Procedures for the establishment, maintenance and administration of reserves for unearned assessments, loss reserves and loss expense reserves and for the determination and distribution of assessment and/or investment refunds, in accordance with sound actuarial principles, including the assumptions and methodology used; and

12. With respect to groups providing for self-insurance of workers' compensation liabilities, the group shall:

i. Guarantee benefit levels equal to those required by the workers' compensation law and other applicable statutes and provide a plan for the prompt payment of such benefits. Information documenting an individual member's financial strength and liquidity shall be made available to the Department upon the Department's written request and in a form specified by the Department;

ii. Provide a minimum contribution of at least \$250,000 for the group's first year of operation and thereafter the minimum contribution shall be at least \$500,000 for each subsequent year of operation unless otherwise approved by the Commissioner; and

iii. Unless otherwise approved by the Commissioner, provide for assessments based upon the Experience Rating Plan provided for in the New Jersey Workers' Compensation and Employers' Liability Insurance Manual on file with the Commissioner.

(d) The bylaws shall also be accompanied by the following information and documentation and any amendments thereto:

1. Designation of the trustees, administrator and custodian of the group's assets, as well as the chairman and secretary, if any;

2. Copies of the group's prospective and executed agreements or contracts and any renewal or new agreements or contracts with any administrator, servicing organization or custodian of the group's assets. Such agreements or contracts shall specify the duties of, and compensation to be paid to, each such entity. Copies of the above shall be accompanied by a list of all parties having or deriving any interest, right or benefit in the servicing organization or administrator;

i. To the extent the terms and conditions of any renewal agreement or contract and the parties thereto remain unchanged from the prior year, a copy of the renewal agreement or contract shall not be required. In lieu of filing a copy of the renewal agreement or contract, the group shall file a notice with the Department in the format of Exhibit A in the chapter Appendix incorporated herein by reference, that the agreement or contract and parties thereto remain unchanged from the prior year;

ii. Copies of any changes to the agreements or contracts shall be filed with the Department within 10 days after such changes are approved by the group;

3. A fidelity bond for all persons handling group assets in a form and amount acceptable to the Commissioner;

4. A surety bond for the claims administrator, or any other servicing organization deemed necessary by the Commissioner in a form and amount acceptable to the Commissioner, and a surety bond for any other servicing organization as deemed appropriate by the trustees in a form and amount acceptable to the trustees;

5. Evidence of errors and omissions insurance coverage for the servicing organization(s), administrator and producer, if employed by the fund, who negotiates excess insurance or reinsurance on behalf of the fund;

6. A designation and appointment of an agent in New Jersey to receive service of process on behalf of the fund as well as the address in this State where the books and records of the fund will be maintained at all times;

7. A list of the board of trustees and executive officers, updated annually;

8. Data forms, in the format set forth in Exhibit B in the chapter Appendix incorporated herein by reference, incorporating the appropriate and necessary professional qualifications for senior officers and directors of the administrator and servicing organizations providing services to the group updated and submitted to the Commissioner annually. An entity providing services to more than one group may submit one data form for all funds formed pursuant to this subchapter which the entity services;

i. To the extent the information contained in the data forms remains unchanged from the prior year, the group need not file updated forms, provided that the group files a notice with the Department, in the format of Exhibit C in the chapter Appendix incorporated herein by reference, that the same individuals are utilized and that the information in the data forms remains unchanged from the prior year;

9. Copies of each insurance policy or excess insurance contract purchased by the group, including a copy of the cover note or binder;

10. A description of any producer arrangement plan by which producers, who shall be licensed pursuant to N.J.S.A. 17:22A-1 et seq., represent members in their dealings with the group. The description shall include, but not be limited to, copies of all producer contracts, which

shall include a description of the producer's obligations, responsibilities and compensation; the duration of such contracts; and an indication whether the contracts are subject to renewal. Copies of renewal contracts or a notice of renewal shall also be provided consistent with the requirements set forth in (d)2 above.

i. The compensation paid to producers shall be reasonable. The Commissioner may disapprove any arrangement if he or she determines that the terms of the arrangement are unreasonable;

11. A cash management plan, which shall include the designation of depository institution(s) for the holding of group monies and the group's investment policy; and

12. A copy of the application form to be utilized by the group for prospective new members applying for membership in the group.

(e) Each risk management group shall, concurrently with the filing of its bylaws as provided at (a) above, file its risk management program and any amendments thereto with the Department as specified in (f) below.

(f) The trustees shall prepare, or cause to be prepared, a risk management program for the risk management group. The program description shall include, but not be limited to:

1. The perils or liabilities to be insured against;
2. The limits of coverages, whether self-insurance, direct or excess insurance purchased from a commercial carrier, or reinsurance;
3. The amount of risk to be retained by the group;
4. The amount of unpaid claims to be established;
5. The proposed method of assessing contributions to be paid by each member of the group;

6. Procedures governing loss adjustment and legal fees;
7. Coverage to be purchased from a commercial insurer, if any;
8. Reinsurance to be purchased, if any, and the amount of premium therefor;
9. Procedures for the closure of fund years including the maintenance of all relevant accounting records;
10. The assumptions and methodology used for the calculation of appropriate reserves required to be established, maintained and administered in accordance with sound actuarial principles pursuant to (a)10 above; and
11. The maximum amount a certifying and approving officer may approve for payment pursuant to N.J.A.C. 11:15-7.22.

(g) The Commissioner may, at the time of filing of the bylaws and risk management program and whenever thereafter he or she deems it expedient, make or cause to be made, an examination of the assets and liabilities, financial condition, method of conducting business and all other affairs of any group. For the purpose of the examination, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals or specialists as examiners, or may request the trustees to authorize and employ such person or persons to conduct the same or to assist therein as he or she deems advisable. The reasonable expenses of the examination shall be fixed and determined by the Commissioner, and such expenses shall be paid by the group examined to the appropriate entity or person upon presentation of a detailed account.

1. For purposes of completing an examination of any group pursuant to N.J.S.A. 18A:64-91c and this subchapter, the Commissioner may examine or investigate any person, or the

business of any person, insofar as such examination or investigation is, in the sole discretion of the Commissioner, necessary or material to the examination of the fund.

2. Every group or person from whom information is sought, including its officers, directors and agents, shall provide the Commissioner or other person appointed as an examiner pursuant to this subsection, timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the group being examined.

3. The administrator and servicing organization(s), and their officers, directors, employees and agents, or other person, shall facilitate the examination and aid in the examination so far as it is in their power to do so. The Commissioner may, in accordance with the procedures set forth in N.J.A.C. 11:15-7.8, suspend or terminate the authority of any group, if the group, by its administrator, servicing organizations, or officers, directors, employees, or agents thereof, refuses to submit to an examination or to comply with any reasonable request of the examiners.

11:15-7.7 Disapproval of bylaws and risk management program

If the Commissioner determines that the bylaws or risk management program of the group or any subsequent amendments thereto do not contain all of the information set forth in N.J.A.C. 11:15-7.6, are not submitted in the proper format set forth in N.J.A.C. 11:15-7.5, or otherwise do not meet the requirements of N.J.S.A. 18A:64-86 et seq. or this subchapter, the Commissioner shall disapprove the bylaws or risk management program and notify the group in writing, which notice shall contain the specific reasons for disapproval, and the requirements to be met before approval may be granted. If not disapproved by the Commissioner within 60 days of receipt of the bylaws and risk management program or any amendments or changes thereto, which contain all of the in-

formation and documentation set forth in N.J.A.C. 11:15-7.6, in the format set forth in N.J.A.C. 11:15-7.5, and which meet the requirements of N.J.S.A. 18A:64-86 et seq. and this subchapter, the bylaws and program shall be deemed approved.

11:15-7.8 Revocation of approval

(a) After notice and opportunity for a hearing, the Commissioner may suspend or terminate the authority of any group, or direct or take any action deemed necessary for good cause, to enable a group to meet its obligations, cover its expected losses, or to liquidate, rehabilitate or otherwise modify its affairs if a group:

1. Is found to be insolvent or has experienced a deterioration in financial condition to the extent that it causes or may cause an adverse affect upon the ability of the group to pay expected losses;
2. Fails to timely pay any fee or assessment;
3. Fails to pay any claim within 30 days after a final judgment is rendered against the group or the group's obligation for such claim otherwise becomes final;
4. Fails to comply with any of the provisions of N.J.S.A. 18A:64-86 et seq. or this subchapter, or with any lawful order of the Commissioner within the time prescribed; or
5. Fails to follow its approved bylaws or risk management program.

(b) In addition, the Commissioner may suspend or terminate a group's authority if, after notice and opportunity for hearing, he or she finds that:

1. There was a material misrepresentation in any of the information supplied to the Commissioner;

2. The group or any of its trustees, administrator, servicing organization or agents has otherwise shown itself to be untrustworthy or incompetent; or

3. The group, its trustees, administrator, servicing organization or agents has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto.

11:15-7.9 Approval of non-members

(a) Prospective new members of the group shall submit an application for membership to the group's board of trustees on a form acceptable to the Commissioner. The application shall include a copy of the resolution of participation and executed indemnity and trust agreement. The trustees may approve or disapprove the application for additional members, pursuant to the bylaws of the group.

(b) Any application approved by the group shall, within 15 days of approval by the group, be filed with the Department and shall be accompanied by a revised budget with assessment detail, if otherwise required pursuant to N.J.A.C 11:15-7.4(e), an actuarial statement regarding the adequacy of the member's assessment to cover anticipated losses, and any amendments to the group's bylaws and risk management program as may be necessary. The group shall file only the specific changes to the bylaws or risk management program in effect for the current fund year. Where a group purchases direct insurance, or where an actuary has determined a "per capita" rate for the member's assessment to cover anticipated losses which has been previously filed with the Department, actuarial certification of the adequacy of these same rates for each new member is not required. The Commissioner may nevertheless require actuarial certification of a per capita rate for the new member's assessment to cover anticipated losses if, in his or her opinion, the new member

will impose an extraordinary impact on the exposure of the group. In addition, the group shall file the following information in the form of Exhibit D in the chapter Appendix incorporated herein by reference with the Department within 15 days after approval of a new member:

1. The name and address of the new member;
2. The effective date of coverage;
3. The name of the new member's risk manager;
4. The name of the new member's trustee;
5. The lines of coverage for which the new member participates;
6. The amount of assessment, if not otherwise provided; and
7. An affirmative statement from the group that in accepting the new member,

an application has been filed, the group has adhered to its bylaws and risk management program, and the agreement to participate and indemnity and trust agreement have been filed with the group.

(c) If a non-member is not approved for membership, the group shall set forth in writing the reasons for disapproval and send the reasons for disapproval to the non-member. The group shall retain a copy of all disapprovals for five years.

11:15-7.10 Termination and/or withdrawal of group members

(a) A member of the group must remain a member for the full term of membership, as provided in the group's bylaws, unless earlier terminated by the group for nonpayment of assessments, noncompliance with risk management or underwriting standards, or for other reasons subject to prior approval by the Commissioner as causes for expulsion. However, such member shall not be deemed terminated for any reason until:

1. Thirty days after written notice of the intention to terminate the member has been given by the group to the member, which notice shall state the reasons for termination and shall be given by registered mail or certified mail, return receipt requested;

2. Like notice shall have been filed with the Department, together with a certified statement that the notice provided for by (a)1 above has been given; and

3. Thirty days have elapsed after the filing required by (a)2 above has been made.

(b) A member of the group that does not desire to continue as a member upon the expiration of its membership term, as provided in the group's bylaws, must give written notice of its intent to withdraw 90 days before expiration of the term period.

(c) A member that has been terminated by or does not continue as a member of the group shall nevertheless share in any surplus in the appropriate trust accounts for that fund year and shall remain jointly and severally liable for claims incurred by the group and its members during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

(d) The group shall immediately notify the Department if termination or withdrawal of a member causes the group to fail to meet any of the requirements of N.J.S.A. 18A:64-86 et seq. or this subchapter. Within 15 days of such notice, the group shall advise the Department of its plan to bring the group into compliance.

11:15-7.11 Insolvency and/or bankruptcy of group members

The insolvency or bankruptcy of a member does not relieve the group or any other member of joint and several liability for the payment of any claims incurred by the member during the pe-

riod of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

11:15-7.12 Voluntary dissolution of a group

(a) A group may not voluntarily dissolve or otherwise cease to do business and distribute its assets to its members, unless and until it satisfies the following requirements:

1. A majority of the group's members must have voted in favor of a resolution to dissolve the group, pursuant to a written plan adopted pursuant to the procedures set forth in the group's bylaws, at a meeting duly called for such purposes;

2. The plan of dissolution must provide for the payment of all unpaid losses of the group and its members, including all incurred but not reported losses, as certified by an actuary, before any assets of the group or the trust fund accounts may be used for any other purpose;

3. The plan of dissolution shall contain a statement of the group's current financial condition computed both on a statutory basis and according to generally accepted accounting principles as attested to by an independent certified public accountant; and

4. The plan of dissolution, and such other information as may be required, must be filed with and approved in writing by the Commissioner. The plan shall be filed with the Commissioner not later than 90 days prior to the proposed effective date of dissolution.

11:15-7.13 Establishment of trust fund accounts; transfers or withdrawals prohibited

(a) Pursuant to the terms of the indemnity and trust agreement, each group shall establish a separate trust fund account in accordance with N.J.A.C. 11:15-7.6(c)10 from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance

or reinsurance premiums for each type of liability or risk retained jointly on a self-insured basis. Such accounts shall be designated as claims or loss retention fund accounts.

1. Other than for the purposes specified in (a) above, or as otherwise authorized by this subchapter, no withdrawal may be effected from a claim or loss retention fund without the prior written approval of the Commissioner, except for intertrust fund transfers. Intertrust fund transfers, within a fund's fiscal year, may be conducted by the group at any time, by providing 30 days prior written notification to the Commissioner. If the Commissioner does not disapprove of the transfer, in writing, within 30 days after receiving such written notification, the request for intertrust fund transfer(s) shall be deemed approved. Any intertrust fund transfer request must be supported by appropriate assessment and claim and expense documentation, and be accompanied by a certification signed by an actuary that the amount remaining in the trust fund account after the intertrust fund transfer will be at a level which is reasonable in relation to that account's unpaid losses, along with all documentation in support of such certification. Intertrust fund transfers may be conducted only where each member participates in each and every claim or loss retention fund account during that fund year. The Commissioner shall waive the full participation requirement provided the group demonstrates to the Department that it maintains records of each member's pro rata share of each claim or loss retention fund account for that year, and that the transfer shall be made so that any potential dividend shall not be reduced for a member that did not participate in the account receiving the transfer.

11:15-7.14 Administrative account

Each group shall establish an administrative account for each fund year which shall be utilized for payment of the group's general operating expenses, including, but not limited to, loss pre-

vention activities, data processing services and general legal expenses. A group shall not be required to establish a separate administrative account by fund year, provided the fund provides a plan in its bylaws which provides for the recording and accounting of all transactions by fund year.

11:15-7.15 Assessments

(a) Each participating member of a risk management group shall appropriate and pay to the group its assessments as required by the risk management group. During the first year of operation of a risk management group these contributions shall be paid in two equal installments, the first installment payable no later than July 15 and the second installment payable no later than November 15 or in any other manner that the Commissioner in his or her discretion may direct. Subsequent years' assessments may be paid in such installments as shall be provided in the group's bylaws, provided, however, that the full assessment shall be paid by each member no later than February 1, or in such other manner as provided in the group's bylaws as approved by the Commissioner.

(b) Each member's annual assessment shall consist of amounts allocated for the administrative account, contingency trust fund account where appropriate, plus a specific assessment to establish and/or replenish the claim or loss retention trust fund account for each type of coverage provided by the group and in which such member participates.

(c) The total amount of each member's annual assessments to the group shall be certified by the trustees to the governing body of each participant at least one month prior to the beginning of the next fiscal year. As a condition of continued participation in the group, each member shall pay the amount certified at such time and in such manner provided in the group's bylaws.

(d) Unless otherwise approved by the Commissioner, the annual assessment of each group member providing for the self-insurance of workers' compensation and employers' liability

coverages shall be based upon the Experience Rating Plan provided for in the New Jersey Workers' Compensation and Employers' Liability Insurance Manual on file with the Commissioner. The Commissioner may withdraw his or her approval of any assessment if he or she finds that such assessment is unreasonable or inadequate for the members of the group to which it applies. In taking any action under this section, the Commissioner may require that the trustees, administrator, any servicing organization or agent of the group provide such information as he or she deems necessary.

(e) Nothing contained in this section shall preclude the assessment and payment of supplemental assessments as provided in N.J.A.C. 11:15-7.16.

11:15-7.16 Supplemental assessments

(a) Each group shall levy upon its members an additional assessment whenever needed or so ordered by the Commissioner, to supplement the group's claim or loss retention or administrative accounts to assure payment of the group's obligations, including payment of benefits under the workers' compensation law.

1. The group shall assess each participating member an additional proportionate amount, as provided in the group's bylaws and risk management program or as directed by the Commissioner, to replenish claims or loss retention or administrative accounts.

(b) The board of trustees shall submit to the Commissioner a report of the causes of the group's or account's insufficiency, the assessments necessary to replenish it and the steps taken to prevent a recurrence of such circumstances.

(c) The participants shall provide such additional assessments in accordance with the provisions of any applicable law and this subchapter.

11:15-7.17 Failure or refusal to provide required assessments

Should any member of a group fail or refuse to pay as directed its assessment(s) to the group or to pay as directed any supplemental assessment(s), or should the trustees fail to assess funds required to meet the obligations of the group, the chairman of the board of trustees, if any, or in the event of his or her failure to do so, the custodian of the group's assets, shall notify the Commissioner in writing. Upon such notification, the Commissioner shall order the group or member to take such remedial action as he or she deems necessary.

11:15-7.18 Individual loss reserve funds

(a) Whenever the risk management program of a group requires any members of the group to retain individually a specified amount of risk, potential liability, or incurred losses, the participant shall provide for such liability, or incurred losses:

1. As a deductible to be charged to the operating expenses of the incurring member; or
2. Through a separate item of appropriation for the loss year in its annual budget.

11:15-7.19 Certification of funds

Prior to any commitment or agreement requiring the expenditure of funds by the risk management group, the custodian of the group's assets shall certify the availability of sufficient unencumbered funds in the account to fully pay all charges or commitments to be accepted.

11:15-7.20 Investments; application of investment income

(a) The free balance of any account maintained by a risk management group, whether for claim or loss retention, administrative, or contingency, shall be invested to obtain the maximum interest return practicable. All investments shall be made in accordance with the group's cash management plan and consistent with the statutes and regulations of the State Investment Council governing the investment of surplus public monies of the State.

(b) The investment and interest income earned by the investment of the assets of each claim or loss retention fund account shall be allocated to each such account by fund year.

(c) The investment and interest income earned by investment of the assets of the administrative account shall be credited to that account.

11:15-7.21 Refunds; interyear fund transfers

(a) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year as certified by an actuary may be declared to be refundable by the group not less than 24 months after the end of the fund year.

(b) The group may seek approval from the Commissioner to make initial refund payments from a claims or loss retention fund account remaining from any year which has been completed at least 24 months by submitting a written notification to the Department, with accompanying documentation as set forth in this subsection, at least 30 days prior to the proposed refund. If the Commissioner does not disapprove, in writing, the request to make the refund within the 30 day period, the request shall be deemed approved. The Commissioner may also affirmatively approve the request prior to the expiration of the 30 day period. The written notification shall be accompanied by appropriate documentation including, but not limited to, assessment, claims and expense detail; actuarial certification that the loss and loss expense reserves are adequate for the group to have an

overall surplus for that fiscal year; and such other information that the Commissioner may require. The initial and any subsequent refund for any year from a claim or loss retention trust account may be in any amount subject to the limitation that after the refund, the remaining net current surplus in the account from which the refund is made must equal or exceed the surplus retention requirement to be calculated as follows:

1. Fund year paid losses shall be multiplied by the appropriate paid loss factor for the line of coverage and duration of maturity set forth in Exhibit E in the chapter Appendix incorporated herein by reference;

2. Fund year unpaid claim reserves, excluding reserves for incurred but not reported claims, shall be multiplied by the appropriate unpaid claim factor for the line of coverage and duration of maturity set forth in Exhibit E in the chapter Appendix incorporated herein by reference. Unpaid claim reserves, excluding reserves for incurred but not reported claims, shall be established at full value and not discounted; and

3. The greater of the results from the calculation set forth in (b)1 and 2 above shall then be reduced by the amount of outstanding losses reported, including incurred but not reported claims, as certified by an actuary. The result of this calculation, but not less than zero, shall be the surplus retention requirement for that fund year.

(c) A full and final refund of net current surplus will not be allowed until all case reserves and all unpaid claim reserves are closed.

(d) A refund for any fiscal year shall be paid only in proportion to the member's participation in the group for such year. Payment of a refund on a previous year shall not be contingent on the member's continued membership in the group after that year.

(e) At the option of the member the refund may be retained by the group and applied towards the member's next annual assessment.

(f) A group may seek approval from the Commissioner to make interyear fund transfers from a claims or loss retention trust account from any year not sooner than 24 months after the end of that year by submitting a written notification to the Department with appropriate documentation as set forth in (b) above at least 30 days prior to the proposed transfer. If the Commissioner does not disapprove, in writing, the request within the 30-day period, the request shall be deemed approved. The Commissioner may also affirmatively approve the request prior to the expiration of the 30-day period. The interyear fund transfer may be in any amount subject to the limitation that after the transfer, the remaining net current surplus in the account from which the transfer is made must equal or exceed the surplus retention requirement determined pursuant to (b) above for that account for the fiscal year. The membership for each fiscal year involving interyear fund transfers must be identical between fiscal years. The Commissioner shall waive the identical membership requirement provided the fund demonstrates to the Department that it maintains records of each member's pro rata share of each claim or loss retention fund account, and that the transfer shall be made so that any potential dividend shall not be reduced for a member that did not participate in the year receiving the transfer.

11:15-7.22 Disbursements and/or payment of claims

(a) All disbursements, payment of claims settlements or other expenditure of funds of the risk management group whether for administrative expenses or for claims purposes must be approved by a majority of the board of trustees, unless approved pursuant to (b) below.

(b) To allow the expeditious resolution of certain claims, the board of trustees may designate the group's administrator or servicing organization as a "certifying and approving officer." The certifying and approving officer may be authorized by the board of trustees to approve for payment of any or specified types of claims in an amount not to exceed an amount approved by the Commissioner in the risk management program. The authority of the certifying and approving officer may be conditioned or restricted by the board of trustees to require prior consultation, limitation as to the types or total amount of claims or payments which may be approved, or such other procedures or restrictions as the board of trustees may deem appropriate. The authority of the certifying and approving officer may be revoked or modified at any time by the trustees.

1. Upon approval, the certifying and approving officer shall certify the amount and particulars of such approved claims to the official having custody of the group's assets, directing that a check for payment be prepared.

2. The certifying and approving officer shall prepare a report of all claims approved by him or her since the last such report, detailing the nature and amount of the claim, the payee, the reasons supporting payment and any other pertinent information. This report shall be submitted to the board of trustees at their next scheduled meeting. The board of trustees shall review and approve the actions of the certifying and approving officer. In the event a claim approved and paid by the certifying and approving officer is not approved by the board of trustees, it shall direct appropriate action to be taken.

(c) All requests for payments shall be accompanied by a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that it is correct, and shall be certified by an officer or duly designated agent or employee of the risk management group having knowledge of the facts that the goods have been

received by, or the services rendered to the group. In the case of claims or losses to be charged against any loss fund, the group's claims administrator, if there be one, shall certify as to the correctness and validity of the claim.

(d) All claims shall be paid by check. The check shall be signed by two persons so designated by the trustees. Payment of claims may be made in such other manner as provided in the group's bylaws as approved by the Commissioner.

(e) All claims and other disbursements approved for payment by the trustees or certifying and approving officer shall be recorded in a claims register and general ledger maintained by the custodian of the group's assets.

11:15-7.23 Excess insurance and/or reinsurance

(a) Consistent with N.J.A.C. 11:15-7.6(a)6, each group providing primary or underlying coverage on a self-insured or commercially insured basis shall secure excess insurance or reinsurance in a form, in an amount and by an insurer, or other entity authorized to provide such coverage in this State pursuant to law, acceptable to the Commissioner, if commercially available and not unreasonably priced, as determined by the trustees for each fund year, and as approved by the Department.

1. Any approval by the Department pursuant to (a) above shall be for a period not to exceed the longer of 12 months from the date of approval or the end of the current fund year. Any group seeking to extend the period of the approval shall notify the Department not later than 45 days prior to the expiration of the term of the approval. The notification shall specify the basis upon which the trustees have determined that excess insurance or reinsurance required pursuant to (a)

above is not commercially available or is not reasonably priced, and shall include all actions taken by the group to obtain required excess insurance or reinsurance.

(b) The policies of excess insurance and/or reinsurance issued by an insurer to a group shall provide single accident (single occurrence) excess insurance, and aggregate excess insurance, in accordance with this subsection.

1. Each group shall maintain a minimum cap for aggregate excess insurance in the appropriate amount depending upon the group's specific per occurrence retention and the size of the group's cumulated budgeted losses as determined in accordance with the specifications set forth in Exhibit F in the chapter Appendix incorporated herein by reference. To the extent the group has different specific per occurrence retentions for different lines, the group shall utilize the highest specific occurrence retention. To the extent the specific per occurrence retention is not specified in chapter Appendix Exhibit F, the group shall utilize the next highest applicable specific per occurrence retention set forth therein.

2. The group's aggregate self-insured retention for the fund year shall be no greater than 125 percent of its budgeted losses.

(c) Certificates of excess insurance and/or reinsurance showing policy limits, specific and aggregate retentions, and other information shall be available for the inspection of each member and shall be filed with the Commissioner.

(d) Losses in excess of the established self-insurance retention shall be borne by the excess carrier(s) according to the terms and conditions of the excess contract(s).

(e) Any proposed change in the terms or limits of excess insurance and/or reinsurance shall be submitted to the Department for approval at least 30 days prior to the effective date of the proposed change.

(f) Notwithstanding the requirements in (a) through (e) above:

1. A group shall not be required to maintain single accident (single occurrence) excess insurance if the group's single accident (single occurrence) limit of liability as set forth in its approved risk management program is equal to or less than its single accident (single occurrence) self-insured retention as approved by the Department.

2. In lieu of maintaining aggregate excess insurance as provided in (a) through (e) above, a group may establish and provide for the funding of an aggregate excess loss contingency fund. The fund shall make annual contributions to the loss contingency fund, the amount of which shall be based on the fund's cumulated budgeted losses and specific per occurrence retention, and determined in accordance with Exhibit G in the chapter Appendix incorporated herein by reference. The required contribution for the current fund year shall be the current fund year's budgeted losses, multiplied by the appropriate factor in chapter Appendix Exhibit G. To the extent the group has different specific per occurrence retentions for different lines, the group shall utilize the highest specific occurrence retention. To the extent the specific per occurrence retention is not specified in chapter Appendix Exhibit G, the group shall interpolate the appropriate percentage from the percentages indicated. For any fund year, the loss contingency fund shall include the required annual contribution for the current fund year and for the fund year immediately preceding. Such contingency fund may be utilized solely for the replenishment of a claim or loss retention fund account for losses in excess of budgeted losses for a fund year. A group shall notify the Department within 30 days of the transfer of monies from the aggregate excess loss contingency fund to a claim or loss retention fund account. Annual contributions for the second preceding fund year, and fund years prior to the second preceding fund year, which have not been utilized to replenish a claim or loss retention fund

account, may be released without restriction. The group, however, shall notify the Department in writing within 30 days of any release of prior contributions.

3. A group may obtain aggregate excess insurance in accordance with (a) through (e) above for some lines of coverage for a particular fund year. For lines of coverage that are not covered by aggregate excess insurance, the group shall provide a loss contingency fund pursuant to (f) above. For purposes of determining the annual contribution, the group shall utilize its cumulated budget losses for all lines to determine the appropriate factor in chapter Appendix Exhibit G, and shall multiply that factor by the budgeted losses only for those lines of coverage for which the loss contingency fund is established.

4. If a group seeks to purchase aggregate excess insurance, but such coverage is only available at a retention greater than 125 percent, the group shall establish a modified loss contingency fund at an amount determined as follows:

i. 125 percent shall be subtracted from the attachment point of the aggregate excess insurance purchased;

ii. 125 percent shall be subtracted from the minimum reinsurance cap required for the group determined pursuant to chapter Appendix Exhibit F;

iii. The dollar amount of a loss contingency fund, as if established and determined pursuant to (f)2 above, shall be multiplied by 125 percent; and

iv. The amount of the loss contingency fund required shall be equal to amount obtained by multiplying the result in (f)4iii above by the result in (f)4i above, and dividing that result by the result in (f)4ii above. In no event shall the modified loss contingency fund required by (f)4 above be required to be greater than that required to be established pursuant to (f)2 and 3 above.

(g) For purposes of this section:

1. "Budgeted losses" means the amount established in the group's budget for losses anticipated for a particular fund year, as annually certified by group's actuary; and

2. "Cumulated budgeted losses" means the group's budgeted losses for the current fund year plus the four fund years immediately preceding. For a group in existence for less than three years, cumulated budgeted losses shall be based on an estimate of three years budgeted losses pro rata for that period. For example, a newly formed group would multiply its cumulated budgeted losses by three, a group with two years experience would multiply its cumulated budgeted losses by 1.5, and so on. Any group with three years or more of experience shall base its cumulated budgeted losses on its actual years of experience, not to exceed five years.

(h) Nothing in this section shall be construed as prohibiting a group from establishing an aggregate excess insurance cap or a loss contingency fund, as applicable, in amounts greater than those required by this section.

11:15-7.24 Financial statement and reports

(a) An annual certified report in a form acceptable to the Commissioner shall be prepared by each group, filed with the Department, and made available to each group member on or before December 31 of each year. The report shall include:

1. An annual audited statement of the financial condition of the group prepared by an independent certified public accountant and performed in accordance with generally accepted accounting principles, which shall include a statement of the organization of the group indicating the persons who perform each function for the group and the relationship and interdependency of

each function, and including the group's balance sheet and receipts and disbursements for the preceding year;

2. Reports of outstanding liabilities by line of coverage showing the number of claims, amounts paid to date and current reserves for unpaid losses, claims and unearned assessments as certified by an actuary;

3. A certification by the presiding officer of the board of trustees that periodic reports were made to group members in the form and manner required by N.J.A.C. 11:15-7.4(h);

4. Any material changes in information from that previously submitted; and

5. Such other information as may be requested by the Department from a particular group.

(b) In addition to the reports required pursuant to (a) above, for the initial two fiscal years of a group, a group shall file with the Department quarterly unaudited statements of the financial condition of the fund in a form acceptable to the Commissioner within 60 days after the end of each calendar quarter. After the initial two years, a group shall file with the Department semi-annual unaudited statements of the financial condition of the group in a form acceptable to the Commissioner within 60 days after the end of each six-month period. The semi-annual report covering the six-month period ending June 30 shall include a compilation of the results reported in the semi-annual report for the period ending December 31 immediately preceding. All statements filed pursuant to this subsection shall include the information set forth in (a) above, except that certification by a certified public accountant or the actuarial opinion statement shall not be required.

(a) In addition to any examination conducted pursuant to N.J.A.C. 11:15-7.6(g), the Commissioner may conduct an examination of any group as he or she deems necessary, or at any time the Commissioner has reasonable cause to believe the group may be insolvent or in a financial condition detrimental to its members or the public. It shall be the duty of the group members, trustees, and administrator to notify the Commissioner of any information indicating that any fund may be in a financial condition detrimental to the group's members or the public.

(b) The group's members or trustees may, upon majority vote, request that the Commissioner order an examination of the group, or any group member, which they, in good faith, believe may be in a financial condition detrimental to other group members or to the public.

(c) Any examination made pursuant to N.J.S.A. 18A:64-91c and this subchapter shall be conducted in accordance with the procedures set forth in N.J.A.C. 11:15-7.6(g).

11:15-7.26 Servicing organizations; administrator

(a) No servicing organization of a fund or producer appointed pursuant to N.J.A.C. 11:15-7.6(d)10, or their employees, officers or directors shall have either a direct or indirect financial interest in the administrator of that group, or be an employee, officer or director of the administrator, unless notice of such interest has been provided to the trustees and members.

(b) No administrator of a group, or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a servicing organization of that group, or an insurance producer appointed by that fund pursuant to N.J.A.C. 11:15-7.6(d)10, unless notice of such interest has been provided to the trustees and members.

(c) Each contract with a servicing organization providing claims adjustment and administration services shall include a clause stating: "Unless the trustees otherwise permit, the servicing

organization shall handle to their conclusion all claims and other obligations incurred during the contract period."

(d) The trustees shall notify the Department within 10 days of any determination to terminate or nonrenew any agreement with a servicing organization. The notification shall include a detailed statement that sets forth the manner and method by which claims handling and other obligations performed by the servicing organization will be provided or a statement that sets forth the reasons why the trustees believe that the particular service is no longer necessary.

(e) The trustees may designate an administrator to carry out the policies established by the trustees and to provide day-to-day management of the group. The minutes of the trustees' meetings shall detail the areas of authority delegated to the administrator.

(f) Any employee, officer or director of an administrator, servicing organization, or producer appointed pursuant to N.J.A.C. 11:15-7.6(d)10 shall disclose to the trustees any direct or indirect financial interest such employee, officer or director has in any other administrator, servicing organization or insurance producer.

11:15-7.27 Notice and hearing

(a) The Commissioner shall give prior written notice of any proposed suspension, revocation of authority, cease and desist order, or other enforcement action to the trustees or member as the case may be, or to any person to whom the proposed enforcement action applies specifically. Such notice shall be served personally or by certified or registered mail upon all interested parties, shall set forth the grounds for the proposed enforcement action, and shall inform the interested party of its right to request a hearing on the proposed enforcement action.

(b) The interested party involved shall have 20 days from the mailing of the notice to request a hearing on the proposed enforcement action. Such a hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Failure to mail a request for a hearing within the time prescribed shall result in the suspension, revocation, monetary penalty or cease and desist order becoming effective 30 days from issuance of the original notice. In no event shall any revocation become effective prior to the date that a hearing is scheduled.

11:15-7.28 Orders

(a) After notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-7.27, the Commissioner may issue an order revoking or suspending a group's authority or requiring a person or fund to cease and desist from engaging in an act or practice found to be in violation of any provision of N.J.S.A. 18A:64-86 et seq. or this subchapter.

(b) Upon a finding, after notice and opportunity for a hearing, as provided at N.J.A.C. 11:15-7.27, that a group has violated any cease and desist order, the Commissioner may revoke his or her approval of the group.

(c) Upon a finding, after notice and opportunity for a hearing, as provided at N.J.A.C. 11:15-7.27, the Commissioner may issue an order requiring the trustees to dismiss an administrator or servicing organization or terminate the contract of an administrator or servicing organization because of any fraud, material misrepresentation, incompetence or untrustworthiness, misappropriation or conversion of monies or violation of any fiduciary responsibilities by such administrator or servicing organization, or any of the employees, officers or directors thereof.

11:15-7.29 Compliance dates

Unless otherwise provided by this subchapter, all information and documents and any amendments thereto required by this subchapter shall be filed within 30 days from the date such information or document is issued or such change or amendment has occurred.

11:15-7.30 Severability

The rules contained in this subchapter and any of the provisions thereof shall be severable, and if any of its provisions shall be held to be unconstitutional or otherwise invalid, the decision of the court shall not affect the validity of the remaining rules and regulations or any of the provisions thereof.