

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 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 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;

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) An environmental impairment liability fund may seek approval pursuant to (b) above to make an initial refund payment from any trust account remaining from any year which has been completed for at least 120 months, in the case of any liability or legal or defense services coverages, or at least 12 months, in the case of environmental or risk management services coverage; and may seek approval to make subsequent refund payments from a trust account remaining from any year which has been completed for at least 132 months, in the case of any liability or legal or defense services coverages, or at least 24 months, in the case of environmental or risk management services coverage.

(d) A full and final refund of net current surplus will not be allowed until all case reserves and all unpaid claim reserves are closed. Notwithstanding anything in this section to the contrary, an environmental impairment liability fund may not refund any monies from the account established for purposes of paying the debt on any bonds issued pursuant to N.J.S.A. 40A:10-38.1.

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

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

(g) In the case of an environmental impairment liability fund, the commissioners or executive committee may appropriate a portion of any refund to the appropriate contingency account subject to the provisions of N.J.A.C. 11:15-2.13(b).

(h) A fund 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, or 60 months, in the case of an environmental impairment liability fund, 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. In the case of a fund other than an environmental impairment liability fund, 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. An environmental impairment liability fund may not make an interyear fund transfer without the prior approval of the Commissioner. 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 the particular fund, 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 may 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 may be made so that any potential dividend shall not be reduced for a member that did not participate in the year receiving the transfer.

Amended by R.1989 d.507, effective September 18, 1989.

See: 21 N.J.R. 3051(b), 21 N.J.R. 3017(a).

Requirement at (a) changed from 12 months to 24 months; subsequent refund amounts and time period provisions added, interyear transfer provisions added at (e), surplus requirement tied to claims data at (b).

Amended by R.1995 d.408, effective August 7, 1995.

See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Added (b)1 and (b)2; renumbered (e) as (f) and provided for waiver of identical membership requirement; and added new (e).

Amended by R.1996 d.534, effective November 18, 1996.

See: 28 N.J.R. 4027(a), 28 N.J.R. 4877(a).

#### 11:15-2.22 Disbursements and/or payment of claims

(a) All disbursements, payments of claims settlements or other expenditures of funds of the fund whether for administrative expenses or for claims purposes must be approved by a majority of the fund commissioners or the executive committee thereof, unless approved pursuant to (b) below.

(b) To allow the expeditious resolution of certain claims, the fund commissioners may designate the fund's administrator, lead agency or servicing organization as a "certifying and approving officer" pursuant to N.J.S.A. 40A:5-17. The certifying and approving officer may be authorized by the fund commissioners 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 plan of risk management. The authority of the certifying and approving officer may be conditioned or restricted by the fund commissioners 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 fund commissioners may deem appropriate. The authority of the certifying and approving officer may be revoked or modified at any time by the fund commissioners.

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 fund'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 fund commissioners at their next scheduled meeting. The fund commissioners 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 fund commissioners, they 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 joint insurance fund having knowledge of the facts that the goods have been received by, or the services rendered to the fund. In the case of claims or losses to be charged against any loss fund, the joint insurance fund'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 fund commissioners. Payment of claims may be made in such other manner as provided in the fund's bylaws as approved by the Commissioner and the Commissioner of the Department of Community Affairs.

(e) All claims and other disbursements approved for payment by the fund commissioners, the executive committee thereof or the certifying and approving officer shall be recorded in a claims register maintained by the custodian of the fund's assets.

Amended by R.1995 d.408, effective August 7, 1995.

See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Substituted "fund" for "joint insurance fund" throughout, and in (b) amended the certifying and approving officer's payment authority.

Amended by R.1996 d.534, effective November 18, 1996.

See: 28 N.J.R. 4027(a), 28 N.J.R. 4877(a).

### 11:15-2.23 Excess insurance and/or reinsurance

(a) Consistent with N.J.A.C. 11:15-2.6(a)6, each fund 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 fund's executive committee for each fund year, and as approved by the Department and the Department of Community Affairs.

1. Any approval by the Department pursuant to (a) above shall be for a period not to exceed either the longer of 12 months from the date of approval or the end of the current fund year. Any fund 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 executive committee has 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 fund to obtain required excess insurance or reinsurance.

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

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

2. The fund'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 and the Department of Community Affairs 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 fund shall not be required to maintain single accident (single occurrence) excess insurance if the fund's single accident (single occurrence) limit of liability as set forth in its approved plan of risk management is equal to or less than its single accident (single occurrence) self-insured retention as approved by the Department.