

3. The Commissioner shall, within 30 days of a properly completed request for a hearing, determine whether the matter constitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

i. If the Commissioner finds that there are no good-faith disputed issues of material facts and the matter may be decided on the documents filed, the Commissioner shall notify the applicant in writing as to the final disposition of the matter.

ii. If the Commissioner finds that the matter constitutes a contested case, the Commissioner shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) Receipt of a timely request for a hearing in the form set forth in (a)1 above shall stay the effect of a denial of relief until the Commissioner's final disposition of the matter made pursuant to this section.

New Rule, R.1993 d.24, effective January 4, 1993.
See: 24 N.J.R. 3212(a), 25 N.J.R. 138(a).

SUBCHAPTER 36. RISK RETENTION GROUPS AND PURCHASING GROUPS

11:2-36.1 Purpose and scope

(a) The purpose of this subchapter is to regulate in this State the formation and/or operation of:

1. Foreign or alien risk retention groups; and
2. Purchasing groups formed in the United States pursuant to 15 U.S.C. § 3901 et seq.

(b) This subchapter applies to:

1. All foreign or alien risk retention groups and their legal representatives, who are doing or intend to do business in this State; and
2. All purchasing groups with members located in this State and their legal representatives, who are doing or intend to do business in this State.

11:2-36.2 Definitions

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

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Doing business in this State” means solicitation in this State, having group members in this State, or having an office in this State.

“Domicile” means, with respect to a purchasing group: for a corporation, the state in which the purchasing group is incorporated; for an unincorporated entity, the state of its principal place of business.

“Insurance” means primary insurance, excess insurance, reinsurance, surplus line insurance and any other arrangement for shifting and distributing risk which is determined to be insurance pursuant to the laws of the State.

“Liability” means legal liability for damages, including the cost of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of: any profit or non-profit business, trade, product, services, including professional services, premises, or operations; or any activity of any state or local government or any agency or political subdivision thereof, but does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the Federal “Employers' Liability Act,” 45 U.S.C. § 51 et seq.

“Plan of operation or a feasibility study” means an analysis which presents the expected activities and results of the risk retention group, including: information sufficient to verify that its members are engaged in business or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; for each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available; pro forma financial statements and projections; appropriate opinions by a qualified actuary, including the determination of minimum premium or participation levels and capitalization required to commence operations and to prevent a hazardous financial condition, which shall be in the format and otherwise satisfy all requirements established by the Commissioner for loss reserve actuarial opinions required to be submitted by licensed property and casualty insurers in this State; identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies and reinsurance agreements; identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state; and such other matters as may be prescribed by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state.

“Purchasing group” means any group which has as one of its purposes the purchase of liability insurance on a group basis; purchases such insurance only for its group members and only to cover their similar or related liability exposure;

is composed of members whose business or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; and is domiciled in this or any other state.

“Risk retention group” means any corporation or other limited liability association: which is organized for the primary purpose of, and whose primary activity consists of, assuming and spreading all, or any portion, of the liability exposure of its group members; which is chartered and licensed as a liability insurance company and is authorized to engage in the business of insurance under the laws of any state, or prior to January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands, and before that date, certified to the commissioner of insurance, or other appropriate official, of at least one state that it satisfied the capitalization requirements of that state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as defined in the Federal “Product Liability Risk Retention Act of 1981,” Pub.L. 97-45 (15 U.S.C. § 3901 et seq.), before October 27, 1986; which does not exclude any person from membership in the group solely to provide for members of that group a competitive advantage over such a person; which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group, or has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and its owners are the only persons who comprise the membership of the risk retention group and who are provided insurance by such group; whose members are engaged in businesses or activities similar or related with respect to the liability to which those members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; whose activities do not include the provision of insurance, other than liability insurance for assuming and spreading all or any portion of the liability of its group members, and reinsurance with respect to the similar or related liability exposure of any other risk retention group, or any member of any other group, which is engaged in businesses or activities so that this group or member meets the requirement that members are engaged in businesses or activities similar or related with respect to the liability to which those members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations for membership in the risk retention group which provides the reinsurance; and the name of which includes the phrase “risk retention group.”

Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

11:2-36.3 Risk retention group registration requirements

(a) No risk retention group shall do business in this State as a risk retention group until it has complied with the requirements of this subchapter and received Notice of Registration from the Department.

(b) Any risk retention group which is chartered and licensed under the laws of any other state and which wishes to do business in this State shall submit to the Department:

1. A copy of its certificate of authority or license authorizing it to transact business as an insurance company, certified by the state of domicile;
2. A statement identifying the state(s) in which the risk retention group is chartered and licensed as a liability insurance company, the date of its charter and admission as a licensed insurer and its principal place of business, and any other information, including information regarding its membership. Additionally, the statement shall include the following:
 - i. The identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group;
 - ii. The amount and nature of initial capitalization;
 - iii. The coverages to be afforded; and
 - iv. The states in which the group intends to operate;
3. A copy of its plan of operation or a feasibility study and revisions of such plan or study submitted to the state or states in which the risk retention group is chartered and licensed in accordance with N.J.S.A. 17:47A-1 et seq.;
4. An Application for Registration (as set forth in Appendix A and incorporated herein by reference) and a Notice of Appointment (as set forth in Appendix B and incorporated herein by reference), which designates the Commissioner as its agent for the purpose of receiving service of legal documents or process; and
5. Payment of the \$100.00 registration filing fee which shall accompany the statement of registration, in accordance with N.J.A.C. 11:1-32.

(c) The risk retention group shall notify the Department of any change in the information in the Application for Registration within 30 days of any change.

(d) Each foreign and alien risk retention group which has received a certificate of registration from the Department to do business in this State shall submit to the Department:

1. On or before March 1, or as prescribed by the state of domicile, a statement of financial condition for the preceding calendar year ended December 31. The statement shall be on a form as prescribed by the state of domicile;