

TITLE 11. DEPARTMENT OF BANKING AND INSURANCE - DIVISION OF INSURANCE
CHAPTER 2. INSURANCE GROUP
SUBCHAPTER 33. WORKERS' COMPENSATION SELF-INSURANCE

§ 11:2-33.1 Purpose and scope

(a) This subchapter sets forth the filing requirements for an employer seeking to self-insure its workers' compensation liability pursuant to *N.J.S.A. 34:15-77*.

(b) This subchapter applies to all employers seeking to self-insure workers' compensation liability in this State.

§ 11:2-33.2 Definitions

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

"Applicant" means an employer applying for an exemption from insuring its compensation liability.

"Certificate of Order Granting Exemption from Insuring Liability for Compensation" or "certificate" means the written order of the Commissioner that exempts the applicant from insuring its workers' compensation liability pursuant to *N.J.S.A. 34:15-77*.

"Certificate holder" means an employer who currently possesses a valid certificate.

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

"Compensation liability" means loss or damage from liability as established by *N.J.S.A. 34:15-1 et seq.*

"Employer" is as defined at *N.J.S.A. 34:15-36*.

§ 11:2-33.3 Exemption from insuring compensation liability; filing requirements

(a) Any employer which applies for an exemption from insuring all or part of its compensation liability shall submit the following to the Commissioner:

1. A copy of its most recent annual financial statement certified by an independent certified public accountant to present fairly, in accordance with generally accepted accounting principles, and statutory accounting principles where applicable, the financial condition of the applicant;

2. A copy of its Form 10K filing;

3. A brief description of the following, inclusive of all operations in New Jersey, for every separate applicant seeking an exemption:

- i. The nature and location of the applicant's business operations;
- ii. The applicant's number of employees; and
- iii. The estimated average annual payroll; and

4. For corporate applicants domiciled in a state other than this State, a copy of the applicant's registration with the New Jersey Secretary of State.

(b) Upon the Commissioner's review and acceptance of the information submitted pursuant to (a) above, the applicant shall submit the following information to the Commissioner:

1. A completed application form in the format of Exhibit A in the Appendix incorporated herein by reference;
2. Evidence that excess insurance will be obtained in a form and amount acceptable to the Commissioner including the amount of liability that the applicant intends to retain;
3. A loss history on open and closed claims for the applicant's workers' compensation and employers' liability for the three years immediately preceding the date of the application; and
4. The application filing fee as set forth in *N.J.A.C. 11:1-32.4(b)13*.

(c) If the applicant is a corporation, the applicant may request that the Commissioner include the name of any subsidiary corporation under the control of that corporation in the certificate conditioned upon the applicant's compliance with the requirements of (a) and (b) above for each subsidiary corporation.

1. The Commissioner shall not include the name of any subsidiary in the certificate unless the ultimate parent corporation guarantees that it will discharge the subsidiary's liability as evidenced by filing an indemnity agreement in the format of Exhibit B in the Appendix incorporated herein by reference, or in such other form which is acceptable to the Commissioner. The applicant shall also file a certification of the resolution of the board of directors, in the format of Exhibit C in the Appendix incorporated herein by reference, or in such other form which is acceptable to the Commissioner.

2. If the name of the subsidiary is included in the certificate of the ultimate parent corporation and ownership of the ultimate parent or subsidiary corporation changes, the ultimate parent or subsidiary shall reapply for the certificate within 30 days of the ownership change. The Commissioner may revoke the existing certificate if the ultimate parent or subsidiary fails to reapply for the certificate as set forth above.

(d) An applicant with a substantial number of subsidiaries in New Jersey may request permission to file a consolidated application on behalf of itself and its subsidiaries which shall be in a form acceptable to the Commissioner. The applicant shall demonstrate that the relationship between the parent company and the subsidiaries is clearly evident to covered employees.

1. Upon granting any such request, the Commissioner shall require such information as he or she deems necessary to ensure that the applicant and its subsidiary corporations will satisfy the requirements for the issuance of a certificate pursuant to *N.J.S.A. 34:15-77* and this subchapter, including, but not limited to, a listing of all subsidiary corporations to be included in the certificate(s).

2. If the application is approved pursuant to this subsection, the certificate holder shall notify the Commissioner of any additions or deletions to the list of subsidiaries covered under the certifi-

cate(s) within 15 days of such change. Coverage for a subsidiary under the parent corporation's certificate(s) shall not terminate until notice has been filed with the Commissioner.

3. The Commissioner may subsequently require an applicant or certificate holder permitted to file consolidated information pursuant to this subsection to file information for each subsidiary corporation based upon any changes in the relationship between the parent and its subsidiaries occurring after permission was granted.

(e) If the applicant is a subsidiary, and the subsidiary's ultimate parent does not apply for a certificate, the subsidiary shall obtain a guarantee from the ultimate parent that it will discharge the subsidiary's liability as evidenced by the filing of an indemnity agreement and certification of the resolution of the board of directors as set forth in (c) above.

(f) In addition to the filing fee set forth in (b)4 above, the applicant shall be assessed and shall pay upon demand the amount necessary to reimburse the Department for expenses incurred in obtaining a risk assessment report on the applicant from a rating agency as determined by the Commissioner.

(g) If an application is approved, the applicant shall submit a surety bond in a form and amount determined by the Commissioner, with a minimum penal sum of \$ 500,000 and an executed contract of excess insurance in an amount acceptable to the Commissioner. Upon receipt of the required surety bond and executed contract of excess insurance, the Commissioner shall issue a "Certificate of Order Granting Exemption from Insuring Liability for Compensation" to the applicant.

(h) All certificates shall be valid from the date of issuance until June 30 immediately following and may be renewed thereafter, pursuant to *N.J.A.C. 11:2-33.4*, for a one-year period beginning July 1 and ending June 30 the following year.

(i) Information or notifications required by this subchapter or other information reasonably deemed necessary by the Commissioner or otherwise required by law shall be sent to:

New Jersey Department of Banking and Insurance
Office of Financial Examinations
Attention: Workers' Compensation Self Insurance
20 West State Street
PO Box 325
Trenton, New Jersey 08625-0325

§ 11:2-33.4 Renewals

(a) Any certificate holder which applies for renewal shall submit the following so that it is received by the Commissioner not later than 60 days prior to the expiration of its current certificate:

1. A completed "Statement by Employer Exempted From Insuring Liability For Compensation" as set forth in Exhibit D in the Appendix incorporated herein by reference;

2. A supplementary statement of outstanding death or disability claims as set forth in Exhibit E in the Appendix incorporated herein by reference for the calendar year immediately preceding the expiration date of the certificate;

i. The certificate holder shall provide the name, address and telephone number of the person who actually completed the supplementary statement, and shall provide the location of the claim records utilized in the preparation of the statement.

3. A copy of the certificate of renewal of excess insurance;

4. A financial statement for the fiscal year immediately preceding the expiration date of the certificate which is certified by an independent certified public accountant to present fairly, in accordance with generally accepted accounting principles, and statutory accounting principles, where applicable, the financial condition of the certificate holder;

5. A certification that the certificate holder recognizes that it may be subject to examination by the Commissioner as required pursuant to (e) below;

6. The renewal fee as set forth in *N.J.A.C. 11:1-32.4(b)13*; and

7. Any other information that is materially different from the information provided in the original application or from the information provided in the last renewal period.

(b) In addition to the renewal fee set forth in (a)6 above, upon the initial renewal of its certificate the certificate holder shall be assessed and shall pay upon demand the amount necessary to reimburse the Department for expenses incurred in obtaining a risk assessment report on the certificate holder from a rating agency as determined by the Commissioner.

1. The requirement in (b) above shall not apply to any certificate holder that was required to submit a risk assessment report as part of the initial application pursuant to *N.J.A.C. 11:2-33.3(f)*.

2. After the initial submission of the risk assessment report pursuant to *N.J.A.C. 11:2-33.3(f)* or *33.4(b)*, the Department may obtain a risk assessment report on the certificate holder and assess the certificate holder the costs of obtaining such report as set forth herein if the Commissioner determines that the certificate holder's financial condition may have deteriorated, or an event occurs which is reasonably likely to cause the certificate holder's financial condition to deteriorate as provided at (e) below.

(c) After the submission of the application for renewal, the Commissioner may require a surety bond, or an increase in the penal sum of an existing surety bond, in an amount determined by the Commissioner if he or she deems it necessary to ensure that the certificate holder satisfies the requirements for the issuance of a certificate set forth in *N.J.S.A. 34:15-77* and this subchapter.

(d) Upon approval of the application for renewal, the Commissioner shall issue a new certificate.

(e) If the Commissioner determines that the certificate holder's financial condition may have deteriorated, or an event occurs which is reasonably likely to cause the certificate holder's financial condition to deteriorate, he or she may conduct such further examination of the certificate holder as he or she deems necessary to ensure that the certificate holder continues to satisfy the requirements for the issuance of a certificate set forth in *N.J.S.A. 34:15-77* and this subchapter.

1. In determining whether to conduct such an examination pursuant to this section, the Commissioner shall consider the following factors, without limitation:

i. A major loss suffered by the certificate holder over the previous year or a trend of losses over several years;

ii. A significant decrease in the certificate holder's bond rating over the previous year or a trend of decreases over the past several years;

iii. A significant increase in claims payments by the certificate holder to employees; or

iv. Major environmental litigation or asbestosis litigation to which the certificate holder has or may become subject.

2. The examination may consist of an examination at the certificate holder's offices conducted by the Commissioner's designee; a review of such additional information as the Commissioner may request, including, but not limited to, a risk assessment report as set forth in (b) above, and a statement of opinion by a qualified actuary attesting to the adequacy of reserves for outstanding death or disability claims that meets the requirements of N.J.A.C. 11:1-21; or both.

3. The costs of any examinations shall be borne by the certificate holder.

§ 11:2-33.5 Confidentiality

The financial reports submitted pursuant to *N.J.A.C. 11:2-33.3(a)1* and *33.4(a)4*, and the supplementary statement submitted pursuant to *N.J.A.C. 11:2-33.4(a)2*, shall be confidential and shall not be subject to public inspection or copying pursuant to the "Right to Know" law, *N.J.S.A. 47:1A-1* et seq. However, financial reports or statements which have been filed with the Securities and Exchange Commission or the New Jersey Bureau of Securities shall not be confidential pursuant to this section.

§ 11:2-33.6 Cancellation of exemption

(a) A certificate holder may cancel its exemption from insuring compensation liability by notifying the Commissioner in writing by certified letter return receipt requested not later than 30 days prior to date such cancellation takes effect.

(b) Notwithstanding the cancellation of the exemption, the employer shall continue to file with the Commissioner a supplementary statement of outstanding death or disability claims as set forth in Exhibit E not later than June 1 of each year until such time as all open claims are resolved to final payment.

(c) If no surety bond is in effect at the time of the notification of cancellation, the Commissioner may require as a condition of cancellation the certificate holder to provide a surety bond, deposit or other security to ensure the discharge of its obligations under *N.J.S.A. 34:15-1* et seq.

§ 11:2-33.7 Failure to comply with subchapter; denial of exemption

Failure to submit the information required by this subchapter completely and accurately shall constitute grounds for and may result in the denial or refusal to renew an exemption from insuring workers' compensation liability.

§ 11:2-33.8 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the remainder of this subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.