

**TITLE 12 OF THE OFFICIAL COMPILATION OF CODES, RULES AND
REGULATIONS OF THE STATE OF NEW YORK**

**CHAPTER V - WORKERS' COMPENSATION
SUBCHAPTER B - SELF INSURERS
PART 317 – GROUP SELF-INSURANCE**

§317.1 Statement of Purpose

To establish application procedures, qualifications and responsibilities for any group of employers which desires to become, or which has been approved to operate as, a group self-insurer.

§317.2 Definitions

For purposes of these rules,

- (a) “American institution,” shall mean an institution created or existing under the laws of the United States of America or of any state, district or territory thereof.
- (b) “Board of trustees”, shall mean that body, identified in the trust agreement, which is responsible for all operations of the group self-insurer and which shall take all necessary action to protect the assets of the group self-insurer.
- (c) “Claims” shall mean, for purposes of financial reporting and determining trust liabilities, the present value of all workers’ compensation claims, including those incurred but not reported, and the expenses associated therewith which the group is obliged to settle and adjust. Such claims must be determined on an actuarial basis and may be discounted at a reasonable rate. The Board may reject discount rates considered to be unreasonable. Claims may be variously referred to as “claim reserves,” “loss reserves,” or “reserves for loss and loss adjustment expenses” in group self-insurers’ financial statements and actuarial reports.
- (d) “Claims administrator” or “Third Party Administrator” shall mean an individual or entity licensed by the Workers’ Compensation Board pursuant to subdivision (3-b) or (3-d) of section 50 of the Workers’ Compensation Law which is responsible for the administration and defense of workers’ compensation claims of members of an authorized group self-insurer.
- (e) “Contribution” shall mean the annual charge to individual members of a group self-insurer to cover its workers’ compensation liabilities and assessments.
- (f) “Excess insurance” shall mean insurance, purchased from an insurance company authorized by the superintendent of insurance, which reduces the exposure of the group self-insurer i) for workers’ compensation claims and ii) for employers’ liability. Such excess insurance may be specific, aggregate or other insurance, singly or in combination, in amounts and form acceptable to the chair.

- (g) “Group administrator” shall mean an individual or entity that is responsible for ensuring compliance with the provisions of these rules and the coordination of outside services including but not limited to claims processing, loss control and legal, accounting and actuarial services.
- (h) “Group member” or “employer” shall mean an individual employer that is participating in a group self insurance arrangement in accordance with subdivision (3-a) of section 50 of the Workers’ Compensation Law.
- (i) “Group self-insurer,” “employer group,” “group,” or “self-insurance trust,” shall mean an association of employers performing related activities in a given industry that contractually agree, in accordance with section 50(3-a) of the Workers’ Compensation Law, to assume the workers’ compensation liabilities of each associated member.
- (j) “Marketing materials” shall mean any financial statement, pamphlet, circular, graphic, form letter, sales literature, advertising or other communication, whether written, recorded, electronic or verbal, intended for or directed to current or prospective members of the group self insurer.
- (k) “Municipal corporation,” shall mean a county, town, city, village, school district (except a school district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, a district corporation or a special improvement district governed by a separate board of commissioners.
- (l) “Rated activities in a given industry,” described in section 317.3(a) of this Part, shall mean that there exists a homogeneity in the nature of the group members’ business activities.
- (m) “Trust account” or “Trust fund” shall mean a trust account or fund, financed by the contributions of and assessments on members of a group self-insurer, for the exclusive purpose of paying for and otherwise administering workers’ compensation liabilities incurred by members of the group self-insurer.
- (n) “Trust assets” shall mean cash and deposits in a bank or trust company insured under the provisions of the Federal Deposit Insurance Act or investments permitted pursuant to section 317.8(c) of this Part. For purposes of these rules, assets shall not include fixed assets nor shall they include the security posted by the group self-insurer under section 317.5 of this Part.
- (o) “Trust liabilities” shall mean all claims, accrued Workers’ Compensation Board assessments, accrued expenses including administrative costs, costs of excess insurance policies, and other fixed costs, accounts payable, loans, bonds and notes payable, unearned contributions and all other trust obligations.
- (p) “Qualified actuary” shall mean an individual who i) is a member in good standing of the Casualty Actuarial Society, ii) is a member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries, or iii) satisfies the requirements of section 95.5(d) of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

- (q) “Termination” shall mean (i) such action taken by a group self-insurer to remove a group member from participation in the group, or (ii) the cessation of a group’s status as a self-insurance trust.
- (r) “Withdrawal” shall mean such action taken by a group member to remove itself from a group self-insurer.

§317.3 Qualification to Operate as a Group Self-Insurer

To qualify as a group self-insurer and to maintain authorization to operate as a group self-insurer, the following requirements must be satisfied:

- (a) The group must include two or more employers that perform related activities in a given industry and that have been in business for a period of time which is acceptable to the chair. With the exception of groups consisting of municipal corporations, a group self-insurer must demonstrate the related nature of the group members’ business activities, to the satisfaction of the chair, by one or more of the following methods:
 - (1) all group members must be classified within the same or a related Standard Industrial Classification Code (SIC Code) Division Structure as published in the United States Department of Commerce’s Standard Industrial Classification Code Manual, or must share a predominant payroll classification;
 - (2) all group members must be members in good standing in an industry-specific trade association, which shall not have been established for the primary purpose of obtaining group self-insurance status and shall have been in existence for at least five years prior to applying for such status;
 - (3) through the furnishing of such other information as may be required by the chair in order to demonstrate the related nature of the participating employers’ business activities.
- (b) With the exception of groups consisting of municipal corporations, the group must have and maintain an aggregate net worth of members which is at least one million dollars (\$1,000,000), unless otherwise authorized by the chair. The net worth of any related or subsidiary companies which are not signatories to the trust agreement shall not be included in the calculation of aggregate net worth.
- (c) With the exception of groups consisting of municipal corporations, the group must have and maintain a combined annual payroll of group members which, when multiplied by the current manual rates promulgated by the New York compensation insurance rating board, is at least five hundred thousand dollars (\$500,000), unless otherwise authorized by the chair. Such payroll shall only include amounts paid to workers in New York State who are covered by the self-insured group.
- (d) With the exception of groups consisting of municipal corporations, the group must demonstrate i) sufficient aggregate financial strength and liquidity as described in the capitalization requirements set forth in section 317.6 of this Part, ii) adequate security, as described in section 317.5 of this Part, and iii) adequate excess insurance, as described in section 317.10 of this Part, to guarantee the payment and administration of all obligations arising under the Workers’ Compensation Law.

- (e) A group self-insurer that fails to satisfy the requirements set forth in this Subpart to maintain authorization to operate as a group may be subject to dissolution at the direction of the chair.

§317.4 Application Requirements for Authorization of New Employer Groups

- (a) Any group of employers seeking initial authorization to operate as a group self-insurer in accordance with subdivision (3-a) of section 50 of the Workers' Compensation Law shall satisfy the qualifications set forth in section 317.3 of this Part and shall submit an application to the chair as prescribed below. This application shall contain:
 - (1) a current payroll report filed by classification code for each participating employer of the employer group for the preceding annual fiscal period. Such payroll shall only include amounts paid to workers in New York State who are covered by the self-insured group;
 - (2) a description of the safety program, if any, proposed for the employer group;
 - (3) applications for participation duly executed by each employer participating in the group in a form prescribed by the chair;
 - (4) copies of the following items, certified by the group's board of trustees and group administrator:
 - (i) the bylaws of the group self-insurer which shall provide for all of the prescribed terms as set forth in section 317.12 of this Part;
 - (ii) a list of the names and addresses of all trustees, specifically identifying voting trustees. At least two-thirds of the voting trustees shall be officers, partners, members or employees of group members;
 - (iii) a list of the names and addresses of each of the officers, directors and general managers of the group administrator;
 - (iv) a description of the group's organization for the administration of claims as well as the duly executed contract between the board of trustees, the group administrator and the claims administrator;
 - (v) any duly executed contract between the board of trustees and either an attorney-at-law licensed to practice in New York State or a representative of self-insured employers licensed by the Workers' Compensation Board pursuant to subdivision (3-b) or (3-c) of section 50 of the Workers' Compensation Law, pertaining to the representation of group members before the Workers' Compensation Board;
 - (5) with the exception of groups consisting exclusively of municipal corporations:

- (i) the trust agreement, with language prescribed by the chair and in a form approved by the chair, which must be shared with all prospective members of the group and which must be signed by each of the trustees of the group;
 - (ii) the participation agreement, with language prescribed by the chair and in a form approved by the chair, which must be shared with all prospective members of the group and which must be individually executed by each member of the group, and which shall include an acknowledgment that the prospective member has been provided a copy of the trust agreement and has reviewed that agreement, specifically the provisions related to joint and several liability, the methodology utilized to determine member contributions, the annual adjustment to contributions, and to membership terms.
- (6) documentation from the group administrator consisting of:
- (i) evidence of experience in the administration of group insurance or group self-insurance programs or other relevant experience such as that of an attorney-at-law, a certified public accountant, or a qualified actuary who has experience in providing professional services to such groups;
 - (ii) two professional references associated with recent group administration services or other relevant experience; and
 - (iii) if incorporated in New York, a certificate of incorporation or, if not incorporated or incorporated in a state other than New York, proof of an actual place of business in New York, within the meaning of section 308 of the Civil Practice Law and Rules.
- (7) a properly executed application form as prescribed by the chair, whereby the group self-insurer acknowledges its commitment:
- (i) to pay to or on behalf of injured employees and to the dependents of deceased employees all compensation and medical benefits as required by the provisions of the Workers' Compensation Law;
 - (ii) to pay annually its proportionate share of the expense of administration or other expenses or assessments as provided by the Workers' Compensation Law;
 - (iii) to pay any awards commuted pursuant to section 27 of the Workers' Compensation Law into the aggregate trust fund, if required by the chair;
 - (iv) to permit the chair's authorized representatives access to the premises and to audit relevant records of the group administrator, the trustees of the employer group, and/or any individual member of the employer group for the purpose of examining operations and records;
 - (v) to notify the chair, in writing, within ten days of the election, resignation or removal of any member of the board of trustees;

- (vi) to notify the chair, in writing, within ten days of the hiring of any new independent law firm, or third party administrator licensed by the Workers' Compensation Board pursuant to subdivision (3-b) or (3-d) of section 50 of the Workers' Compensation Law, to represent the group before the Board, and to file with the chair a properly executed and certified copy of the contract or service agreement;
 - (vii) to notify the chair, in writing, within ten days of the appointment of any new group administrator and to file with the chair a properly executed and certified copy of the contract or the service agreement, as well as documentation from the new group administrator as required by section 317.4(a) of this Part;
 - (viii) to produce full, truthful and timely reports as required by the chair in section 317.19 of this Part;
 - (ix) to notify the chair and all group members, in writing, within ten days of any alteration, modification or amendment to terms of the group's trust document, participation agreement or bylaws.
- (8) With the exception of groups consisting exclusively of municipal corporations, groups shall
- (i) deposit with the chair and maintain securities, cash, surety bond or irrevocable letters of credit, in a form and an amount as determined by the chair in accordance with section 317.5 of this Part;
 - (ii) maintain excess insurance as defined in section 317.2(f) of this Part;
 - (iii) have each group member execute a participation agreement as prescribed by this section.
- (b) Groups which do not consist exclusively of municipal corporations shall also be required to submit:
- (1) a description of the nature of the group members' business activities and evidence that they perform related activities in a given industry in accordance with section 317.3(a) of this Part;
 - (2) an actuarial feasibility study directed and certified by an independent qualified actuary;
 - (3) a report identifying the projected rate of contribution and assessments to be paid by each member for the first year of the group's operation, and the manner in which such contributions and assessments were calculated. Such report shall be closely reviewed by the chair for purposes of determining the adequacy, consistency and rationality of the projected contributions.
- (c) If, upon examination of the application and supporting documentation, the chair is satisfied as to the ability of the employer group to make payment of all claims and to fulfill all other obligations, authorization to operate as a group self-insurer may be granted subject to the conditions set forth in this Part.

§317.5 Security

- (a) Group self-insurers shall deposit with the chair securities, cash, surety bonds and/or irrevocable letters of credit, in an aggregate amount as determined by the chair, but not less than:
 - (1) the combined annual payroll of the group members multiplied by the current manual rates promulgated by the New York compensation insurance rating board; or
 - (2) one and one-half times the group self-insurers' retention as specified on the certificate of excess insurance filed with the chair which limits the liability of a group on a specific, per occurrence basis with respect to claims; but
 - (3) in no event shall such security amount be less than the product of the statutory maximum weekly compensation rate for total disability multiplied by 52, multiplied by 30.
- (b) The amount of a group self-insurer's security will be reevaluated annually following the receipt and review of the annual financial and other reports required in section 317.19 of this Part, and such security deposits may be adjusted at the direction of the chair.
- (c) The group self-insurer's security deposit shall be in a form prescribed herein:
 - (1) The applicant shall deposit with the chair securities of the kind specified in subdivisions (1), (2), (3), (4) and (5), and paragraph (a) of subdivision (7), of section 235 of the Banking Law. Such securities shall be registered in the name of "Chair, Workers' Compensation Board, State of New York." Interest paid on securities on deposit will be regularly remitted to the group self-insurer for whose account they are deposited, so long as such group self-insurer complies with this Part and the provisions of the Workers' Compensation Law, and is not in default in the payment of compensation, assessments or other obligation under the Workers' Compensation Law.
 - (2) A cash deposit may be made in lieu of securities, surety bond or letters of credit. Such cash deposit will be deposited in an interest-bearing account in the name of "Chair, Workers' Compensation Board, State of New York" and shall be in an account authorized by the Comptroller of the State of New York. Such cash deposit is to be by certified check. Interest paid on the cash deposit will be regularly remitted to the group self-insurer for whose account it is deposited so long as such group self-insurer complies with the provisions of the Workers' Compensation Law and is not in default in the payment of compensation, assessments or other obligation under the Workers' Compensation Law.
 - (3) Surety bonds accepted in lieu of securities, cash, or letters of credit shall be undertaken and enforced in the name of the "Chair, Workers' Compensation Board, State of New York" and shall be in form approved by the chair and issued by a company authorized by the superintendent of insurance to write business as a surety in the State of New York.

- (4) A letter of credit must comply with all requirements set forth in Regulation 133 of the New York State Insurance Department, codified as Part 79 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York, except that:
- (i) the beneficiary shall be the Chair, Workers' Compensation Board, State of New York;
 - (ii) the “evergreen clause” shall provide for at least sixty days written notice to the chair of the Workers' Compensation Board prior to the expiration date for non-renewal;
 - (iii) a bank, to be a qualified bank, may in lieu of a determination by the Securities Evaluation Office of the National Association of Insurance Commissioners for purposes of section 79.1(e)(3) of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York, have either a long-term debt rating equal to Baa/BBB or better by Moody's or Standard & Poor's or the equivalent thereto from any other securities rating service, and/or a short-term debt rating of P2/A2 from Moody's or Standard & Poor's or the equivalent thereto from any other securities rating service;
 - (iv) the letter of credit shall additionally provide that any legal proceedings with respect thereto be subject to the jurisdiction of the courts of the State of New York; and
 - (v) the form and content thereof shall be acceptable to the chair.
- (d) The security held by the chair pursuant to paragraph (a) hereof shall not be included in the calculation of the group self-insurer's trust assets for purposes of determining the financial condition of the group.
- (e) The chair may draw upon any security deposits made pursuant to paragraph (a) hereof:
- (i) to satisfy any claims, liabilities, obligations, expenses or assessments of a group self-insurer, or
 - (ii) when a group self-insurer shall have failed to renew or replace a letter(s) of credit within thirty days prior to the expiration date of such letters or to substitute its deposit with cash, securities or a surety bond of equal value. The chair will provide the group self-insurer with notice prior to drawing upon any security deposits.
- (f) Upon receipt of a notice of cancellation of a surety bond or non-renewal of letter(s) of credit filed by a group self-insurer with the chair, the chair may make demand upon the group self-insurer to deposit with the chair within ten days after demand securities or cash, or to file or reinstate irrevocable letters of credit, or post or reinstate a surety bond in an amount determined in accordance with subdivision (a) of this section. If the group self-insurer fails to comply with such demand in the manner and amount demanded, and within the time period required, the privilege of group self-insurance may be revoked.
- (g) If for any reason the status of a group self-insurer is terminated or revoked, the securities or surety bond on deposit shall remain in the custody of the chair, and the irrevocable letter of credit shall remain in force, for a period of at least twenty-six months. At the expiration of such time, or such further period as the chair may deem proper and warranted, the group self-insurer may apply to the

chair for the return of the securities or cash deposited or permission not to renew the letters of credit. The chair may accept the group self-insurer's release policy as specified in paragraph (5) of subdivision (3-a) of section 50 of the Workers' Compensation Law in an amount to be determined by the chair and in a form approved by the superintendent of insurance. Upon acceptance of such policy, the securities or cash of the group self-insurer on deposit with the chair shall be returned to the group self-insurer, or the chair shall notify the group self-insurer that the letters of credit need not be renewed.

- (h) The provisions of this Subpart shall not apply to groups consisting exclusively of municipal corporations.

§317.6 Capitalization

- (a) Group self-insurers shall file evidence of capitalization in an amount approved by the chair as described herein. Groups shall prepare annual financial statements in accordance with Generally Accepted Accounting Principles (GAAP). However, only assets and liabilities as defined in section 317.2 of this Part will be considered when determining the group's financial condition.
- (b) Group self-insurers are required to establish and maintain trust assets, as such term is defined in subdivision (n) of section 317.2 of this Part, in an amount which exceeds trust liabilities, as such term is defined in subdivision (o) of section 317.2 of this Part. Group self-insurers who fail to comply with this capitalization standard shall be deemed "under-funded" and shall immediately provide the chair with an acceptable plan of action as may be appropriate in order to make up the deficiency in a time prescribed by the chair. Such under-funded groups may also be subject to any or all of the provisions set forth in section 317.9 of this Part.
- (c) Upon authorization to operate as a group self-insurer, the group shall deposit into the trust an amount equal to a minimum of 40% of the initial security deposit held by the chair. Consistent with section 317.5(d) of this Part, the security held by the chair shall not be considered a trust asset and shall not be used to satisfy the financial obligations of a solvent trust. By the end of the first full reporting year, the group shall have deposited amounts sufficient to bring the trust assets to an amount which exceeds trust liabilities. These amounts shall be paid to the trust on a monthly, quarterly, or annual basis as required by the bylaws of the group.
- (d) The provisions of this Subpart shall not apply to groups consisting exclusively of municipal corporations.

§317.7 Contribution Rates

- (a) The contribution rates utilized by a group self-insurer shall not be inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of the group.
- (b) If the chair has reasonable cause to believe that a group's contribution rates do not conform to the requirements of subdivision (a) of this section, then he or she may require the submission of a report identifying the contributions paid by each of the group members for the preceding year, the projected

contributions for each group member for the current fiscal year, and the manner in which such contributions were calculated.

- (c) Such report shall be closely reviewed by the chair for purposes of determining the adequacy of contributions as well as the consistency and rationality of the contribution calculations. In addition to other factors, the chair may consider generally accepted actuarial standards as well as the New York Compensation Insurance Rating Board's manual rate premium standards in conducting its review of this report.
- (d) If, after such review, the group's contribution rates are deemed to be inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of the group, the chair may mandate the group's adherence to the New York Compensation Insurance Rating Board's rates and rate making procedures. Groups directed to adhere to the New York Compensation Insurance Rating Board's rates may apply to the chair for discounts to such rates based upon past and prospective losses, investment income, and other relevant factors.

§317.8 Integrity of the Group Self-Insurer's Trust Funds

Every effort shall be made by the group self-insurer, its trustees, its group administrator or other agent(s) to preserve the integrity, strength and liquidity of the group's funds so as to permit the timely and complete payment of all group claims and other liabilities. With the exception of groups consisting of municipal corporations, unless otherwise authorized by the chair, group self-insurers shall be subject to the following requirements with respect to trust funds:

- (a) The group self-insurer, its trustees, its group administrator or other agent(s) shall not utilize any of the trust funds collected from group members or earned by the trust for any purpose not directly related to the payment of claims, security deposits, assessments, penalties, reasonable costs of operation, fixed costs such as excess insurance, the payment of earnings or refunds to group members, or other trust obligations. The group self-insurer, its trustees, its group administrator or other agent(s) shall not borrow money from the trust fund or in the name of the trust and shall not permit any lending, issuance of debt instruments or other forms of obligations and encumbrances, nor shall the group self-insurer, its trustees, its group administrator or other agent(s) extend credit to a member for the payment of contributions or assessments. This restriction shall not preclude the group-self insurer from permitting fixed installment plans, not to exceed one year, for the payment of members' contributions or assessments.
- (b) The trust assets of the group self-insurer shall not be commingled with the assets of any member, nor shall the funds dedicated to the payment and administration of claims, assessments, and other costs arising under the Workers' Compensation Law, or to employer liability costs, be commingled with any other funds, such as those dedicated to pension and health benefits.
- (c) Subject to the limitations set forth in subdivision (d) of this section, a group self-insurer, its trustees, its group administrator or other agent(s) may invest any funds of the trust which are not necessary for the payment of short term obligations of the trust in the following:
 - (1) Government Obligations:

Obligations which are not in default as to principal or interest, which are valid and legally authorized, and which are issued or guaranteed by:

- (i) the United States or by any agency or instrumentality thereof,
- (ii) any state in the United States, or
- (iii) any agency or instrumentality of any state in the United States, provided that such government obligations shall be by law payable, as to both principal and interest, from taxes levied or adequate special revenues pledged or otherwise appropriated.

(2) Obligations of American Institutions:

Obligations which are issued by any solvent American institution which are not in default as to principal or interest provided such obligations:

- (i) are rated A or higher (or the equivalent thereto) by a securities rating agency recognized by the superintendent, or
- (ii) have been given the highest quality designation by the Securities Valuation Office of the National Association of Insurance Commissioners.

(3) Preferred Shares of American Institutions:

Preferred shares issued by a solvent American institution.

(4) Equity interests:

Investments in common shares of any solvent American institution, if such equity interests are registered on a national securities exchange, as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a-78kk or otherwise registered pursuant to said act and, if so otherwise registered, price quotations therefore are furnished through a nationwide automated quotations system approved by the National Association of Securities Dealers, Inc.

(d) Investments of group self-insurers under subdivision (c) of this section shall be subject to the following limitations:

- (1) No group self-insurer shall invest in the obligations or the preferred or common shares of any one American institution in an amount which exceeds five percent of total trust assets nor shall any group self-insurer invest in the obligations or the preferred or common shares of American institutions in an amount which exceeds twenty-five percent of total trust assets.
- (2) No group self-insurer shall invest trust assets in investment securities or obligations of a group member or a group member's parent, subsidiary, or affiliate or any person or entity under contract with the group self-insurer.

- (e) A group self-insurer, its trustees, its group administrator or other agent(s) shall not distribute dividends or excess earnings if such distribution reduces total assets below total liabilities. Prior written notification shall be provided to the chair at least thirty days prior to the issuance of any such distribution.

§317.9 Terms and Procedures Applicable to Under-Funded Group Self-Insurers

- (a) Group self-insurers are required to maintain at all times sufficient trust assets within the trust fund to exceed claims and all other liabilities.
- (b) Group self-insurers whose assets do not exceed liabilities are deemed to be under-funded and may be subject at any time to any or all of the following provisions, at the discretion of the chair:
 - (1) the chair may call for a meeting with the group's board of trustees and/or group administrator to discuss the financial condition of the trust fund and to determine the appropriate course of action to restore the trust fund's financial stability in a timely manner;
 - (2) the chair may require an examination of the group self-insurer pursuant to section 317.4(a)(7)(iv) of this Part;
 - (3) the chair may require the submission of additional financial and/or actuarial documentation from the group self-insurer including, but not limited to, a report such as that described in section 317.7(b) of this Part;
 - (4) the chair may require a written plan from the group's board of trustees and/or group administrator in order to restore the trust fund's financial stability. Such written plan must be in a form and content acceptable to the chair including, but not limited to, a projected plan for member contributions for the next five years or such additional period of time as the chair may require;
 - (5) the chair may suspend the addition of any new members into the group and/or suspend the payment of any earnings on deposits or investments or assessments or any portion thereof until the group self-insurer is deemed to be adequately funded; or
 - (6) the chair may require additional security deposits to be held in accordance with section 317.5 of this Part;
 - (7) the group self-insurer may be required to immediately levy an assessment upon the group members or take such other action as may be appropriate in order to make up the deficiency.
- (c) If the chair determines that the financial stability of the under-funded trust fund cannot be restored in a timely and appropriate manner, the chair may revoke the group's self-insurance status.
- (d) The provisions of this Subpart shall not apply to groups consisting exclusively of municipal corporations.

§317.10 Excess Insurance

- (a) The group self-insurer shall also file certificate(s) evidencing that excess insurance, as defined in section 317.2(f) of the Part, has been obtained to reduce the exposure of the group self-insurer i) for workers' compensation claims, and ii) for employers' liability. Such excess insurance must be in a form approved by the superintendent of insurance and must be issued by a property and casualty company licensed by the superintendent of insurance to write excess insurance in New York with respect to workers' compensation insurance and employer's liability insurance as defined in paragraph (15) of subdivision (a) of section 1113 of the Insurance Law. The retention levels for the excess insurance shall be in an amount acceptable to the chair.
- (b) The group self-insurer shall immediately notify the chair, in writing, of any change in its excess insurance.
- (c) The provisions of this Subpart shall not apply to groups consisting exclusively of municipal corporations.

§317.11 Blanket Fidelity Bond

Every group self-insurer shall be required to file with the chair evidence that it has obtained a Blanket Fidelity Bond providing coverage for theft, disappearance or destruction of money, securities, or other property, in an amount acceptable to the chair. Such Bond shall provide coverage for dishonest acts of the group administrator, or a trustee, employee or agent of the group, whether identified or not, while acting alone or in collusion with others, and shall name the group self-insurer as loss payee. Such Bond shall be maintained at all times during the existence of the group self-insurer.

§317.12 Bylaws

Each group self-insurer's board of trustees must also establish written bylaws which provide detailed information as to the operations and administration of the group self-insurer. Such bylaws shall address issues including but not limited to: qualifications for group membership; procedures for adding or terminating group members; rights and responsibilities of group members including acknowledgment of the joint and several liability assumed by each member of the group; group self-insurer's name, location, fiscal year; basis for establishing member contributions; underwriting considerations; meetings; safety programs, if any; disclosure of group self-insurer's books, reports, etc. to members; and procedures for amending bylaws.

§317.13 Notice Regarding Addition of New Member to Group Self-Insurer

A group self-insurer shall, within thirty days of the execution of a new group member's prescribed participation agreement, notify the chair on a prescribed form of such new group member and file i) an individual group member application and ii) a copy of the properly executed prescribed participation agreement. Coverage within the group will become effective upon execution of the group member application and participation agreement, except in the case of a withdrawal from policy coverage governed by subdivision (a) of Section 94 of the Workers' Compensation Law. In the event the Board subsequently rejects the application, the group must file a notice of termination, in accordance with section 317.14(a) of this Part, within thirty days after the notice of rejection.

§317.14 Notice Regarding Termination or Withdrawal of Member From Group Self-Insurer

- (a) A group self-insurer's termination of a member shall not be effective until at least ten days after notice of such termination, on a prescribed form, has either been filed in the office of the chair or sent by certified or registered letter, return receipt requested, and also served in like manner upon the employer.
- (b) A group member shall not be eligible to withdraw from the group self-insurer and fulfill its future workers' compensation obligations through alternative coverage until it shall have provided the current group self-insurer with at least 30 days notice of its intent to terminate participation. Notice of termination shall also be provided to the chair by the group in accordance with subdivision (a) of this section.
- (c) If the termination or withdrawal of a member causes the group self-insurer to fail to satisfy the qualification requirements set forth in section 317.3 of this Part, related to net worth of group self-insurer and combined payroll, the group's board of trustees and/or group administrator shall, within 30 days of the notice of withdrawal or decision to terminate, advise the chair of its plan to bring the group self-insurer into compliance with the financial and other requirements in a timely and appropriate manner. If the group self-insurer fails to devise a plan which will bring it into compliance in a timely and appropriate manner, the chair may revoke its group self insurance status.
- (d) The group self-insurer shall make a good faith effort to maintain records on the whereabouts of group members which have been terminated or which have withdrawn from participation in the group.

§317.15 Changes in Legal Status of Group Members

Any group member which undergoes any changes in its legal status which results in the issuance of a new taxpayer identification number or unemployment insurance number shall be required to complete a new participation application and shall execute a new participation agreement. A group self-insurer shall, within ten days, notify the chair in writing of any such change and shall, at that time, file the new application and agreement.

§317.16 Merger

With the approval of the chair, two or more group self-insurers may merge into one of the constituent groups. The group self-insurer resulting from the merger of two or more group self-insurers shall assume, in full, all liabilities and obligations of the constituent groups.

§317.17 Solicitation of New Members

Group administrators, trustees of the group, and insurance brokers and consultants shall make a good faith effort to fully disclose to prospective group members both the rights and responsibilities of participating in the group. No party shall make a material misrepresentation or omission of a material fact in connection with the solicitation of a prospective group member, or engage in any practices prohibited by section 2403 of the Insurance Law. No group shall pay commissions to or otherwise engage in marketing or sales relationships

with insurance brokers who have had their licenses suspended or revoked by the Insurance Department. The trustees of a group shall require all brokers to comply with section 2120 of the Insurance Law.

317.18 Marketing Materials

- (a) All marketing materials disseminated or communicated by or on behalf of a group self-insurer, group administrator or trustee of a group shall be strictly factual in nature and shall be truthful and accurate in all respects, and shall not contain any statements which cannot be measured or verified, or which are in any way deceptive, misleading or coercive.
- (b) If the chair has reasonable cause to believe that any marketing materials disseminated or communicated by or on behalf of a group self-insurer, group administrator or trustee of a group do not conform to the requirements set forth in subdivision (a) of this section, then he or she may require that all marketing materials disseminated or communicated by or on behalf of such group self-insurer, group administrator or trustee of the group be submitted to the chair within thirty days. The chair may also direct the submission of additional information supporting such marketing materials.
- (c) If the chair determines that submitted marketing materials do not conform to subdivision (a) of this section, the chair may direct the group self-insurer, group administrator or trustee of a group to:
 - (i) immediately cease dissemination or communication of such materials;
 - (ii) provide the chair with the names and addresses of all entities to whom those materials were disseminated or communicated;
 - (iii) disseminate additional information clarifying or explaining such disapproved materials; or
 - (iv) file, until otherwise directed, all future marketing materials with the chair thirty days prior to their dissemination or communication.

§317.19 Periodic Reports to be Submitted by Group Self-Insurers

- (a) Group self-insurers, with the exception of groups consisting exclusively of municipal corporations, shall file the following reports, evidencing proper capitalization and integrity of trust funds, with the Workers' Compensation Board no later than one hundred and twenty days after the close of the fiscal year of the group:
 - (1) a financial summary report in a form prescribed by the chair;
 - (2) audited financial statements prepared in accordance with GAAP, for the preceding fiscal year, certified by an independent certified public accountant;
 - (3) an actuarial report certified by an independent qualified actuary verifying claims as defined in section 317.2(c) of this Part, and the method of calculating such claims, based upon accepted actuarial standards of practice;

- (4) a payroll report filed by classification code for each group member and in aggregate for the preceding twelve month period and including the current total number of employers participating in the group as well as the current total number of employees for each employer; such payroll report should be accompanied by the final payroll audit of the group, as submitted to the group's excess insurance carrier.
- (b) The chair may engage an attorney, actuary, certified public accountant or other qualified person or organization other than a salaried employee of the board to conduct or assist in an examination of the annual reports submitted herein. In the event that such professional services are utilized, any costs incurred shall be borne and paid by the group self-insurer under examination.
- (c) Group self-insurers shall immediately report to the chair, in writing, any information which materially alters any of the facts presented in the periodic reports above or which indicates that the group is no longer in compliance with requirements set forth in these rules, particularly those set forth in section 317.6 of this Part.
- (d) Group self-insurers shall promptly file with the chair any amendments or updates to its agreements, contracts, bylaws and any other written documentation which must be submitted in accordance with these rules.
- (e) Group members within the construction classification, as defined in subdivision (2) of section 89 of the Workers' Compensation Law, shall be subject to the information submission requirements provided for under paragraph (6) of subdivision (a) of section 674 of the Tax Law and shall file with the Commissioner of Taxation the information described therein.
- (f) Group self-insurers shall also be required to file such additional reports as may be deemed necessary by the chair.

§317.20 Termination and Dissolution of the Group

The group shall continue for such time as may be necessary to accomplish the purpose for which it was created, and so long as all requirements to maintain authorization as set forth in this Part continue to be met. Upon termination of the group's status as a group self-insurer, the group will continue to administer the workers' compensation liabilities incurred by the group. Upon failure on the part of the group to properly administer such liabilities, the chair shall assume the administration and final distribution of the group's assets and liabilities.

§317.21 Revocation of Group Self-Insurer Status

A group which persistently or repeatedly or in any case willfully violates any provision or multiple provisions of this Part, or persistently or willfully fails to comply with any requirement set forth in this Part, may be subject, upon notice and an opportunity to be heard, to revocation of its authorization. In the alternative, the chair may direct the issuance of penalties pursuant to section 317.22 of this Part.

§317.22 Penalties

- (a) A group which violates any provision of this Part, or fails to comply with any requirement set forth in this Part, except failure to timely submit any report required by section 317.19 of this Part, may be subject, upon notice and an opportunity to be heard, to a civil penalty of up to \$2,500 for each violation or instance of non-compliance, payable by the group into the fund created by section 151 of the Workers' Compensation Law.

- (b) A group which fails to timely submit any report required by section 317.19 of this Part may be subject, upon notice and an opportunity to be heard, to a civil penalty of \$500 per day for each day during which it refuses or neglects to submit such report, payable by the group into the fund created by section 151 of the Workers' Compensation Law.