
Rules of
Department of Insurance
Division 200—Financial Examination
Chapter 8—Risk Retention

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**Title 20—DEPARTMENT OF
INSURANCE**

**Division 200—Financial Examination
Chapter 8—Risk Retention**

**20 CSR 200-8.100 Federal Liability Risk
Retention Act**

PURPOSE: This rule effectuates or aids in the interpretation of sections 148.310–148.461, 375.161, 375.786, 384.051 and 384.059, RSMo 1986 as these sections relate to risk retention groups and purchasing groups.

PUBLISHER'S NOTE: The publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the full text of that material will be made available to any interested person at both the Office of the Secretary of State and the office of the adopting agency, pursuant to section 536.031.4, RSMo. Such material will be provided at the cost established by state law.

(1) Risk retention groups as defined in 15 USCA Section 3901(a)(4), purchasing groups as defined in 15 USCA Section 3901(a)(5) and representatives of either will be deemed in compliance with sections 375.161 and 375.786, RSMo (1986) and other relevant insurance laws upon compliance with this regulation.

(2) As used in this regulation, the following terms have the following meanings:

(A) Director means the director of insurance of Missouri;

(B) Domicile, for the purposes of determining the state in which a risk retention group is domiciled, means—

1. For a corporation, the state in which the risk retention group is incorporated; and

2. For an unincorporated entity, the state of its principal place of business;

(C) Hazardous financial condition means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able to—

1. Meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

2. Pay other obligations in the normal course of business;

(D) Insurance means primary insurance, excess insurance, reinsurance, surplus lines insurance and any other arrangement for shifting and distributing risk which is deter-

mined to be insurance under the laws of this state;

(E) Plan of operation or a feasibility study means an analysis which presents the expected activities and results of a risk retention group including, at a minimum, the coverages, deductibles, coverage limits, rates and rating classification systems or schedules for each line of insurance the group intends to offer;

(F) Purchasing group means any group which—

1. Has as one (1) of its purposes the purchase of liability insurance on a group basis;

2. Purchases this insurance only for its group members and only to cover their similar or related liability exposure, as described in paragraph (2)(F)3.;

3. Is composed of members whose businesses 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

4. Is domiciled in any state; and

(G) Risk retention group means any corporation or other limited liability association formed under the laws of any state, Bermuda or the Cayman Islands—

1. Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group's members;

2. Which is organized for the primary purpose of conducting the activity described in paragraph (2)(G)1.;

3. Which—

A. Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

B. Before 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 this date, had certified to the insurance commissioner of at least one (1) state that it satisfied the capitalization requirements of that state, except that any 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 terms were defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Risk Retention Act of 1986);

4. Which does not exclude any person from membership in the group solely to provide for group members a competitive advantage over any person;

5. Which has as its members only persons who have an ownership interest in the group and which has as its owners only persons who are members who are provided insurance by the risk retention group; or has as its sole member and sole owner an organization which is owned by persons who are provided insurance by the risk retention group;

6. Whose members are engaged in businesses or activities similar or related with respect to the liability of which members are exposed by virtue of any related, similar or common business trade, product, services, premises or operations;

7. 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 liability of any other risk retention group (or any members of this group) which is engaged in businesses or activities so that the group or member meets the requirement described in paragraph (2)(G)6. from membership in the risk retention group which provides reinsurance; and

8. The name of which includes the phrase risk retention group.

(3) Risk Retention Group. Every risk retention group chartered in states other than this state, seeking to do business as a risk retention group in this state, shall observe and abide by the laws of this state as follows. Each risk retention group shall register, before offering insurance in this state, with the director by submitting for approval to the director the information concerning the risk retention group as is prescribed in this rule.

(A) Notice of Operations. Any risk retention group doing business in this state shall submit to the director notice of operations consisting of—

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, date of chartering, its principal place of business, the states in which the group intends to operate and other information, including information on its membership, as the director may require;

3. The identity of the initial members of the group, 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, the amount and nature of initial capitalization,

the coverage to be afforded and the states in which the group intends to operate;

4. A copy of its plan of operations or a feasibility study and revisions to the plan of operation or feasibility study if any information contained in it shall change; and

5. A statement of registration on a form provided by the director which designates the director as its agent for the purpose of receiving service of legal documents or process.

(B) Financial Condition. Any risk retention group doing business in this state shall submit to the director financial information consisting of—

1. A copy of the group's annual financial statement submitted to its state of domicile, which shall contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist (under criteria established by the National Association of Insurance Commissioners (NAIC));

2. Upon request by the director, a copy of any examination or audit performed with respect to the risk retention group; and

3. Information as may be required to verify its continuing qualification as a risk retention group.

(C) Taxation. All premiums paid for coverages within this state to risk retention groups shall be subject to taxation at the same rate and subject to the same interest, fines and penalties for nonpayment as that applicable to foreign admitted insurers. Further, each risk retention group shall report all premiums paid to it for risks insured within the state (see sections 148.340 and 148.350, RSMo).

(D) Notice to Purchasers. Any policy issued by a risk retention group, other than a risk retention group which possesses a currently valid certificate of authority to transact insurance business from the director, shall contain, in ten (10)-point type on the front page and the declaration page, the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

(E) Prohibited Acts Regarding Solicitation or Sale. The following acts by a risk retention group are prohibited:

1. The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and

2. The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

(F) Delinquency Proceedings. A risk retention group not chartered in this state must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination.

(G) Examination Regarding Financial Condition. Any risk retention group must submit to an examination by the director to determine its financial condition if the director of the insurance department of the jurisdiction in which the group is chartered and licensed has not initiated an examination within sixty (60) days after a request by the commissioner of this state. Any examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the NAIC's financial *Examiners Handbook*.

(H) Licensing.

1. A risk retention group shall solicit members in Missouri only through appointed agents licensed by the director for general casualty.

2. A broker licensed by the director for general casualty, on behalf of a client seeking insurance, may place insurance with any duly registered purchasing group or risk retention group in the same manner as placing insurance with an authorized insurance company.

(I) Compliance With Unfair Claims Settlement Practices Law. Any risk retention group shall observe and comply with the laws of this state concerning unfair claims settlement practices.

(J) Deceptive, False or Fraudulent Practices. Any risk retention group shall comply with the laws of this state regarding deceptive, false or fraudulent acts or practices. However, if the director seeks an injunction regarding this conduct, the injunction shall be obtained from a court of competent jurisdiction.

(K) Review by Director. The director shall review the information submitted by each risk retention group as provided in this rule to determine that the group is not in a hazardous financial condition or financially impaired and shall make a determination regarding registration. The director is authorized to prohibit the solicitation or sale of insurance in this state by, or the operation of, a risk retention group that is in a hazardous financial condition or which is financially impaired. In its investigation of the reasonably anticipated financial condition of an

applicant risk retention group, the director shall take into account the premium structure indicated in the rating classification schedules submitted by that group, as schedules reflect the potential risk of financial impairment.

(L) Application for Registration.

1. A risk retention group currently registered with the director shall complete and file with the director the Application for Registration set forth in Exhibit A. The application must be filed no later than September 6, 1991. The risk retention group should notify the director of any change in the information in the application within thirty (30) days of any change. Failure to file or to update changes in the application will result in a forfeiture of the risk retention group's registration status with the director.

2. All new applicants for registration must complete and file with the director the Application for Registration set forth in Exhibit A. New applicants must submit a one hundred dollar (\$100) registration fee with the application.

3. All currently registered risk retention groups must pay an annual renewal fee of one hundred dollars (\$100) beginning on July 1, 1991. Failure to pay the renewal fee will result in a forfeiture of registration.

4. All new applicants shall not be required to pay the annual fee as described in subsection (4)(E) until the year following the year the applicant initially registered with the director.

(4) Purchasing Group. Every purchasing group seeking to do business in this state shall register with the director by submitting for approval to the director the information concerning the purchasing group as is prescribed in this rule.

(A) Notice of Operations. Any purchasing group doing business in this state shall submit to the director notice of operations consisting of a sworn statement—

1. Identifying the state(s) in which the purchasing group is domiciled, its principal place of business, the state(s) in which the group intends to operate and other information including information on its membership, as the director may require;

2. Listing the lines and classifications of liability insurance which the purchasing group intends to purchase;

3. Identifying the insurance company from which the group intends to purchase insurance and the domicile of the company; and

4. Stating that to the best of the affiant's knowledge the purchasing group has not and will not purchase from a risk retention group that is not licensed by the director as an

insurance company or an eligible surplus lines insurer in Missouri.

(B) Any purchasing group doing business in this state shall submit to the director information as may be required to verify its continuing qualification as a purchasing group.

(C) Service of Process. Any notice of operation under subsection (4)(A) of this rule shall be accompanied by a statement of registration on a form provided by the director which designates the director as the purchasing group's agent for the purpose of service of process.

(D) Taxes.

1. A purchasing group which purchases insurance from a nonadmitted insurer shall be subject to the surplus line premium tax under section 384.051 or 384.059, RSMo, whichever is applicable, for risks resident, located or to be performed in this state.

2. An admitted insurer which insures the members of a purchasing group shall treat the premiums of members with risks resident, located or to be performed in this state as premiums subject to premium tax under sections 148.310—148.461, RSMo.

(E) Application for Registration.

1. A purchasing group currently registered with the director shall complete and file with the director the application for registration set forth in Exhibit B. The application must be filed by no later than September 6, 1991. The purchasing group should notify the director of any change in the information in the application within thirty (30) days of any change. Failure to file or to update changes in the application will result in a forfeiture of the purchasing group's registration status with the director.

2. All new applicants for registration must complete and file with the director the application for registration set forth in Exhibit B. New applicants must submit a one hundred dollar (\$100) registration fee with the application.

3. All currently registered purchasing groups must pay an annual renewal fee of one hundred dollars (\$100) beginning on July 1, 1991. Failure to pay the renewal fee will result in a forfeiture of registration.

4. All new applicants shall not be required to pay the annual fee as described in subsection (4)(E) until the year following the year the applicant initially registered with the director.

(F) Licensing.

1. A purchasing group located in Missouri shall procure insurance with an admitted company through an agent or broker licensed by the director for general casualty and insurance with a nonadmitted company

through a surplus lines licensee licensed by the director.

2. Any purchasing group soliciting members in Missouri shall do so through an agent licensed by the director for general casualty.

AUTHORITY: section 374.045.1(3), RSMo Supp. 1998. This rule was previously filed as 4 CSR 190-II.190. Original rule filed Aug. 12, 1988, effective Jan. 13, 1989. Amended: Filed Feb. 4, 1991, effective July 8, 1991. Amended: Filed April 23, 1999, effective Nov. 30, 1999.*

**Original authority: 374.045, RSMO 1967, amended 1993, 1995.*



EXHIBIT A

APPLICATION FOR REGISTRATION AS
A RISK RETENTION GROUP
(All information should be typed.)

1. List the corporate name of the Risk Retention Group.

(Name *must* include the phrase "Risk Retention Group")

List any DBAs of the Risk Retention Group.

2. The primary activity of this Risk Retention Group consists of assuming and spreading all, or any portion, of the liability exposure of its members.

3. The Risk Retention Group is organized for the primary purpose of conducting the activity described under item 2.

4. The Risk Retention Group is chartered and licensed as a liability insurance company under the laws of the State of _____, and is authorized to engage in the following lines of insurance under the laws of its chartering state:

5. The Risk Retention Group does not exclude any person from membership in the Group solely to provide for members of the Group a competitive advantage over such a person.

6. Ownership of the Risk Retention Group consists of one *or* the other of the following (check one):

_____ the owners of the Group are the only persons who comprise the membership of the Group and who are provided insurance by the Group;

_____ the sole owner of the Group is _____

(Give name and address of the organization)

An organization whose members only comprise the membership of the Group, and whose owners are only persons who comprise the membership of the Group and who are provided insurance by the Group.

7. The Risk Retention Group is composed of members who are engaged in the following described business or activities, which are similar or related with respect to the liability to which such members are exposed by virtue of related, similar or common business, trade, product, services, premises or operations (Give general description of business or activities engaged in by Group members.):



8. List the name, address and telephone number of each officer of the Risk Retention Group and the key officer or staff person (not an employee of the Group's management company) responsible for overseeing "hands on management" of the Group. (Attach additional pages if necessary.)

8A. List the name, address and telephone number of the company responsible for management of the insurance operations of this Risk Retention Group. (If none, answer none.)

8B. List the name, address and telephone number of the principal agent or broker responsible for marketing the Group's insurance policies. (If none, answer none.)

9. The activities of the Risk Retention Group do not include the provision of insurance other than:
(a) Liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its Group members; and
(b) Reinsurance with respect to the similar or related liability exposure of another Risk Retention Group (or a member of such other Risk Retention Group) engaged in businesses or activities which qualify such other Risk Retention Group (or member) under item 6. for membership in this Group.

- 10. The Risk Retention Group will comply with the unfair claim settlement practices laws of the state of Missouri.
- 11. The Risk Retention Group will pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on the Group under the laws of this state.
- 12. The Risk Retention Group has designated the insurance director of this state to be its agent solely for the purpose of receiving service of legal documents or process.
- 13. The Risk Retention Group will submit to examination by the insurance director to determine the Group's financial condition, if—
(a) The insurance director of the Group's chartering state has not begun or has refused to initiate an examination of the Group; and
(b) Any such examination by the insurance director is coordinated so as to avoid unjustified duplication and unjustified repetition.
- 14. The Risk Retention Group will comply with a lawful order issued in a delinquency proceeding commenced by the insurance director upon a finding of financial impairment, or in a voluntary dissolution proceeding.
- 15. The Risk Retention Group will comply with the laws of this state concerning deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction.
- 16. The Risk Retention Group will comply with an injunction issued by a court of competent jurisdiction upon petition by the insurance director alleging that the Group is in hazardous financial condition or is financially impaired.
- 17. The Risk Retention Group will provide the following notice, in ten (10)-point type, in any insurance policy issued by the Group:



NOTICE

“This policy is issued by your Risk Retention Group. Your Risk Retention Group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your Risk Retention Group.”

18. The Risk Retention Group has submitted to the insurance director, as part of this application and before it has offered any insurance in this state, a copy of the plan of operation or feasibility study which it has filed with the insurance director of its chartering state. This plan or study discloses the name of the state in which the Group is chartered, as well as the Group’s principal place of business, and such plan or study further includes the coverages, deductibles, coverage limits, rates and rating classification systems for each line of insurance the Group intends to offer. The Group will promptly submit to the insurance director any revisions of such plan or study to reflect any changes to the plan including, but without limitation, additional lines of liability insurance which the Group intends to offer, and any change in the designation of the Group’s chartering state.

19. The Risk Retention Group will submit its annual financial statement to the insurance director by March 1 of each year. The annual financial statement will be certified by an independent public accountant and include a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist.

20. The Risk Retention Group will not solicit or sell insurance to any person in this state who is not eligible for membership in the Group.

21. The Risk Retention Group will not solicit or sell insurance in this state, or otherwise operate in this state, if the Group is financially impaired or is in a hazardous financial condition We do hereby swear and affirm that the aforementioned statements and information are true and correct.

President or Chief Executive Officer Secretary

Sworn before me this _____ day of _____, _____.

Notary Public, State of: _____ My Commission Expires: _____

STATE OF _____
DEPARTMENT OF INSURANCE
APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE

The _____,
a Risk Retention Group (called the Group) duly organized under the laws of the State of _____, appoints the insurance director, of the state of Missouri, and his or her successors in office, to be its lawful attorney upon whom all legal process in any action or proceeding against it shall be served and further agrees that any lawful process against it which is served upon this attorney shall have the same legal validity as if served personally upon the Group. The Group gives the insurance director, and his or her successors, full authority to do every act necessary to be done under this appointment as fully as the Group could do if personally present, and ratifies all that the insurance director shall lawfully do under the power granted by this appointment. This authority may be withdrawn only upon a written notice of revocation and in any case shall continue in effect so long as any liability arising out of this appointment remains outstanding in the state. This instrument is executed pursuant to and shall be construed to constitute full compliance with Section 3(a)(1)(D) of the Liability Risk Retention Act of 1986. The Group designates

whose address is _____
as the person to whom process against the Group served upon the director shall be forwarded.

IN WITNESS OF THIS APPOINTMENT, said Group, in pursuant to a resolution duly appointed by its Board of Directors, has caused this instrument to be executed in its name by its President and Secretary, and its corporate seal to be affixed at the City of _____,

State of _____ this _____ day of _____,
Attest:

Secretary

(Name of risk Retention Group)

By:



EXHIBIT B

STATE OF _____
APPLICATION FOR REGISTRATION AS A PURCHASING GROUP
(All information should be typed)

1. List the exact name of the Purchasing Group.

2. Indicate the form of organization or incorporation.

3. The Purchasing Group is domiciled in the State of: _____

4. List any other names under which the Purchasing Group is or may be doing business in this state or any other state if different than item 3.

5. List the complete physical address of the Purchasing Group.

6. List the name, address and telephone number of the principal staff person or officer of the Purchasing Group who has knowledge of its insurance program, including membership criteria, coverages and key personnel of the group's administrator and insurance carrier.

6A. List the name, address and telephone number of the firm that acts as the administrator of the Purchasing Group and the name of the principal account executive responsible for the group's insurance program. (If none, answer none.)

6B. List the name of the principal agent or broker responsible for the sale or purchase of the group's liability insurance. (If none, answer none.)



Principal Officers

Principal Directors

8. The Purchasing Group 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. Give a general description of business or activities engaged in by Purchasing Group members:

9. The Purchasing Group has as one of its purposes the purchase of liability insurance on a purchasing group basis.

10. The Purchasing Group purchases such liability insurance only for its members and only to cover their similar or related liability exposure, as described in item 8.

11. The purchasing group intends to purchase the following lines and classifications of liability insurance:

12. The Purchasing Group intends to purchase the liability insurance described in item 11. above from the following insurance company or companies. Give full name of company, state of domicile and FEIN:

13. List the name and address of the licensed agent or broker through whom purchases will be effected. Complete this item only if purchase of insurance is to be made from a surplus lines insurer, rather than from a licensed insurer.

14. If the purchasing group transacts insurance business by means of a "direct offering" (without using insurance agents to market its program), list the name and address of each person not listed in item 13. who will be transacting business on behalf of the Purchasing Group. (You need not include the names of licensed agents duly appointed by an admitted insurer.)

15. Has any person transacting business on behalf of this Purchasing Group ever:

(A) Been arrested, indicted and convicted of a felony or is a felony charge currently pending against any such person? _____

(B) Had denied any application for a professional, vocational or business license? _____

(C) Had suspended or revoked any such license? _____

(D) Had withdrawn or surrendered any such application or license to avoid potential disciplinary action against licensee? _____

If the answer to any part of this question is yes, attach a supplementary statement explaining in full each such occurrence.

We do hereby swear and affirm that the aforementioned statements and information are true and correct.

President or Chief Executive Officer Secretary

Sworn before me this _____ day of _____, _____

Notary Public, State of _____ My Commission Expires _____

STATE OF _____

DEPARTMENT OF INSURANCE
APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE

The _____,
a Purchasing Group (called the Group) duly organized under the laws of the State of _____,
appoints the insurance director, of the state of Missouri, and his or her successors in office, to be its lawful attorney upon whom
all legal process in any action or proceeding against it shall be served and further agrees that any lawful process against it which
is served upon this attorney shall have the same legal validity as if served personally upon the Group. The Group gives the
insurance director, and his or her successors, full authority to do every act necessary to be done under this appointment as fully as
the Group could do if personally present, and ratifies all that lawfully do under the power granted by this appointment. This
authority may be withdrawn only upon a written notice of revocation and in any case shall continue in effect so long as any
liability arising out of this appointment remains outstanding in the state. This instrument is executed pursuant to and shall be
construed to constitute full compliance with Section 4(e) of the Liability Risk Retention Act of 1986.

The Group designates _____
whose address is _____
as the person to whom process against the Group served upon the director shall be forwarded.

IN WITNESS OF THIS APPOINTMENT, said Group, pursuant to a resolution duly appointed by its Board of Directors, has
caused this instrument to be executed in its name by its President and Secretary, and its corporate seal to be affixed at the City of
_____ State of _____ this _____ day of _____, _____

Attest:

Secretary (Name of Purchasing Group)

By:

President