

VERMONT DEPARTMENT OF BANKING, INSURANCE AND SECURITIES

RULE I-90-1

RULES GOVERNING INTERMUNICIPAL INSURANCE AGREEMENTS

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Section 1. Purpose and Authority

This rule is promulgated pursuant to and in accordance with the provisions of Title 24, Chapter 121, Subchapter 6 of the Vermont Statutes Annotated. The purpose of this rule is to set forth rules, forms and procedures regarding Intermunicipal Insurance Agreements that the Commissioner deems necessary to assist in the formation of intermunicipal insurance associations, to expedite approval of any plan of operation, to provide for the fiscal integrity of agreements entered into under the Act, and to regulate trade, market and claim practices engaged in by such associations.

Section 2. Definitions

- A. "Act" means Title 24, Chapter 121, Subchapter 6 of the Vermont Statutes Annotated.
- B. "Actuary" means a person who is not an employee of the Association, has experience in the area of self-insured programs, and is qualified to sign the

applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements.

- C. “Administrator” means an individual, partnership, corporation or other entity authorized to serve as a representative of an Association in carrying out the policies of the Members’ Supervisory Board and managing the Association’s activities.
- D. “Association” means an association, compact or corporation any of which shall be organized not for profit, and formed for the purpose of entering into Intermunicipal Insurance Agreements under the Act.
- E. “Commissioner” means the Commissioner of the Department of Financial Regulation of the State of Vermont.
- F. “Contribution” means money, or a money equivalent approved by the Commissioner, required of a Member for the purpose of distributing, sharing or pooling any risk in an Intermunicipal Insurance Agreement.
- G. “Fiscal integrity” means the economic soundness and fairness of an Intermunicipal Insurance Agreement.
- H. “Health Benefit Association” means an association that offers one or more health benefit plans to school employers, as defined in 16 V.S.A. § 2101, for coverage of their school employees, as defined in 16 V.S.A. § 2101.
- I. “Intermunicipal Insurance Agreement” means an agreement entered into by two or more Members for obtaining or effecting insurance by self-insurance, for obtaining or effecting insurance from any insurer authorized to transact business in this state as an admitted or surplus lines carrier, or for obtaining and effecting insurance secured in accordance with any other method provided by law.
- J. “Member” means a Vermont municipality, as defined in 24 V.S.A. § 4941, which has entered into a Member Agreement and thereby becomes a member in an Association.
- K. “Member Agreement” means the written agreement executed between the Member and the Association setting forth the conditions of membership in the Association, the obligations, if any, of each Member to the other Members, and the terms of the Plan, including coverages, limits and deductibles, where applicable.
- L. “Members’ Supervisory Board” means the governing authority of the Association.

- M. “Plan” means the plan of insurance, self-insurance or intermunicipal risk management offered by the Association to its Members.
- N. “Service Agent” means any individual, partnership, corporation or other entity that may provide any or all of the services necessary to create or maintain an approved Intermunicipal Insurance Agreement, including but not limited to claims adjustment, safety engineering, compilation of statistics, the preparation and collection of Contribution payments, loss reports and the administration of a claims fund.
- O. “Trade, marketing and claim practices” means the methods employed by an Association in advertising, promoting, selling, administering and managing its Intermunicipal Insurance Agreement to and for its Members and prospective Members, and the Association’s treatment of any third-party claimants that may file a claim against or sue a Member.

Section 3. Application for Approval of an Intermunicipal Insurance Agreement; Requirements; Approval; Review

- A. Two or more municipalities, by resolution of their respective legislative bodies, may establish and enter into agreements for obtaining or effecting insurance by self-insurance, for obtaining or effecting insurance from any insurer authorized to transact business in this state as an admitted or surplus lines carrier, or for obtaining and effecting insurance secured in accordance with any other method provided by law. No Association shall receive funds from any municipality for the purpose of distributing, sharing or pooling any risk until a plan for the operation of the Association together with all contracts, agreements, and any other documents underlying or implementing the Plan, and all amendments thereto, have been filed with and approved by the Commissioner. All Members must be municipalities of the State of Vermont. An application for approval shall be verified by oath or affidavit of at least one member of the Members’ Supervisory Board.
- B. If, after review of the Association’s application and other required information, the Commissioner is satisfied that the application is complete, that the Association’s financial condition and method of operation are such that the Association may reasonably be expected to meet the obligations which it has undertaken, that the disclosure to its Members and potential Members is adequate, and that all documents and forms required pursuant to Section 3 of this rule are fair and reasonable, then the Commissioner shall issue approval to the Association. The Commissioner shall act on the application within 90 days of the date that the Commissioner deems the application complete.
- C. An application submitted by an Association shall be accompanied by the following items:

1. A copy of the articles of association, constitution, or other instrument which sets forth the powers of the Association.
2. A copy of the bylaws or the governing rules of the proposed Association.
3. A copy of the proposed forms to be used for the Member Agreement.
4. A copy of the proposed form of power of attorney.
5. Designation of the initial or interim Members' Supervisory Board and the initial or interim Administrator, together with biographical information for each member of the Member's Supervisory Board, the Administrator or the officers of the corporation serving as initial or interim Administrator. This information is to be submitted on a form prescribed by the Commissioner.
6. A copy of the Plan, which shall consist of two components: the financial program and the operational program.
 - a. The financial program shall set forth:
 - i. The insurance coverages to be offered by the Intermunicipal Insurance Agreement, applicable deductible levels, and the maximum liability which the Association will retain;
 - ii. A composite list of the estimated annual gross Contributions to be paid by each organizing Member, including individual and total Contributions for all Members;
 - iii. The aggregate amount of reserves to be set aside for the payment of claims;
 - iv. The amount of specific excess insurance to be purchased and maintained by the Association;
 - v. The amount of aggregate excess insurance to be purchased and maintained by the Association;
 - vi. Pro-forma financial projections for the first 5 years of operation including income statements, balance sheets and projected cash flow statements; and
 - vii. The identification and description of reserves for the self-insurance coverages provided to Members.

- b. The operational program shall, at a minimum, provide for the following:
- i. The method of establishing the Members' Supervisory Board of the Association;
 - ii. Criteria for admitting new Members and allowing existing Members to leave;
 - iii. The responsibility of the Member's Supervisory Board for fixing Contributions to the Association, maintaining reserves, levying and collecting assessments for deficiencies, disposing of surpluses, and administrating the Association in the event of termination or insolvency;
 - iv. The methodology for establishing the annual Contributions of its Members;
 - v. A description of underwriting practices;
 - vi. A description of trade, marketing and claim practices, including a statement that claims handling practices will adhere to the requirements of 8 V.S.A. §§ 4723 and 4724, and rules promulgated thereunder and biographies describing the experience, and qualifications of persons who shall market the Plan. Persons who market the Plan are subject to approval by the Commissioner;
 - vii. A description of the loss prevention and safety engineering programs;
 - viii. The procedure for handling the termination of individual Members, including provisions for refunding Member Contributions;
 - ix. The procedure for dissolution of the entire Intermunicipal Insurance Agreement and the procedure for the distribution of surplus funds in the event of dissolution;
 - x. The investment program and guidelines to be employed in making investments;
 - xi. The procedure for handling a deficit position of the Intermunicipal Insurance Agreement; and

- xii. Such other provisions as are necessary or desirable for the operation of the Association.
 - 7. An actuarial feasibility study prepared by an Actuary.
 - 8. Copies of all contracts between the Association and the Service Agent, if one is used, and a copy of the fidelity bond. If the Association uses a Service Agent, the Service Agent shall furnish a fidelity bond to the Association covering all its employees in an amount sufficient to protect all monies administered by the Service Agent. The fidelity bond shall be issued by an insurer or surety licensed to transact such business in the State of Vermont, by a surplus lines insurer on Vermont's approved list, or any other insurer approved by the Commissioner.
 - 9. A copy of the fidelity bond covering the Administrator and its employees in a form and amount acceptable to the Commissioner. The fidelity bond shall be issued by an insurer or surety licensed to transact such business in the State of Vermont, by a surplus lines insurer on Vermont's approved list, or any other insurer approved by the Commissioner.
 - 10. The address in Vermont where the books and records of the Association shall be maintained at all times.
 - 11. Any other information that the Commissioner deems appropriate.
- D. The Commissioner may exempt Associations which do not involve risk sharing from some or all of the requirements of Section 3.C of this rule.

Section 4. Terms of Approval, Revocation or Dissolution

- A. The Commissioner may suspend or revoke an Association's approval in accordance with the provisions of the Vermont Administrative Procedure Act, 3 V.S.A. § 800 et seq.
- B. Supervision, rehabilitation, liquidation, or dissolution of an Association shall be subject to the provisions of 8 V.S.A. Chapter 145.
- C. In the event of suspension or revocation of an Association's approval as a result of action undertaken pursuant to Section 4.B of this rule, the Commissioner shall give at least 10 days prior notice to the Association unless the Commissioner determines that the public welfare requires a shorter period. The notice shall be served personally, or by certified or registered mail, to the Administrator and/or a member of the Members' Supervisory Board and shall state the reasons for the proposed suspension or revocation and provide the Association with an opportunity to introduce evidence and be heard. If the Association's approval is suspended or revoked after a hearing, such action shall become effective 30 days

after the Commissioner's order is issued. The Commissioner may suspend the Association's authority to operate prior to a hearing, if he or she finds that the public welfare requires such emergency order and incorporates that finding in the order of suspension.

- D. Any suspension may be dissolved by the Commissioner upon proof by the Association that the original reasons for suspension have been satisfactorily corrected, and that the Association continues to meet all other requirements for approval.

Section 5. Member Agreement

- A. Every Member shall execute a Member Agreement. The Member Agreement shall provide for the following:
 - 1. The election of the Members' Supervisory Board by the Members. A majority of the Members' Supervisory Board shall be elected or appointed officials of the Members, except in the case of Health Benefit Associations, which shall comply with the requirements set forth in 24 V.S.A. § 4947(d);
 - 2. A requirement that the Members' Supervisory Board designate and appoint an Administrator and grant the Administrator a power of attorney to accept service of process on behalf of the Association and to act for and bind the Association and its Members in all transactions relating to or arising out of the operation of the Association;
 - 3. The Members' Supervisory Board's right to substitute the Administrator to revoke the power of attorney and to revoke or amend the duties and obligations of the Administrator;
 - 4. A requirement that the Association, at the request of a Member, provide without unreasonable delay to any person designated by the Member proof of any coverages provided by the Association, including any insurance or reinsurance, deductible levels and the maximum liability which the Association will retain;
 - 5. For newly forming Associations, the Member Agreement shall contain or have attached:
 - a. A financial program, as set forth in Section 3.C.6.a of this rule;
 - b. An operation program, as set forth in Section 3.C.6.b of this rule;

6. For new members joining an Association in existence prior to the date of promulgation of this rule, the Member Agreement shall contain or have attached;
 - a. Copies of financial statements for the most recently completed fiscal year;
 - b. An operation program as set forth in Section 3.C.6.b of this rule, including a description of any significant changes; and
 7. Such other provisions not inconsistent with law or this rule.
- B. The Member Agreement shall include a summary that shall fully disclose, where applicable:
1. In regard to each coverage:
 - a. The coverage provided, including detailed descriptions of claims-made coverage;
 - b. The period of the coverage;
 - c. The amount of the deductible per claim or in the aggregate; and
 - d. The maximum amount of coverage to be borne by the Association.
 2. In regard to the Contribution:
 - a. The Contribution amount and the dates Contribution payments are due;
 - b. The basis upon which each Member's Contribution is determined; and
 - c. The conditions under which additional assessments may be made.
 3. In regard to excess coverage of the Association:
 - a. A description of the excess coverage purchased for the Association and its limits for each coverage offered; or
 - b. A statement that there is no excess coverage for the Association if the Association has not obtained such coverage.
 4. The name of the proposed Service Agent and the services to be performed by the Service Agent.

- C. The Member Agreement shall include a prominent disclosure notice that must be signed by a duly authorized officer of the Member. The disclosure notice shall use the following or substantially similar language:

An Intermunicipal Insurance Agreement is not protected by any Vermont Guaranty Association against default due to insolvency. In the event of insolvency, Members and persons filing claims against Members may be unable to collect any amount owed to them by the Association regardless of the terms of the Member Agreement. **IN THE EVENT THE ASSOCIATION IS INSOLVENT, A MEMBER MAY BE LIABLE FOR ANY AND ALL UNPAID CLAIMS AGAINST SUCH MEMBER.**

Section 6. Responsibilities of the Members' Supervisory Board

The Association, its Administrators and the Members' Supervisory Board shall act as fiduciaries to the Members. Service Agents and persons marketing the Plan to current or prospective Members are agents of the Association and owe a fiduciary duty to the Association.

Section 7. Contribution Requirements

- A. For the purpose of funding the Association, the Members shall make Contributions to the Association in the manner prescribed in the Member Agreement.
- B. The following surplus amounts are required at the effective date of approval:
 - 1. A minimum surplus of \$500,000.
 - 2. The Commissioner may require additional surplus funds, based on the coverages and exposures involved.

The Association shall have paid these amounts into a depository designated by the Association. The Commissioner may approve surplus amounts different than those determined above, provided the amounts are sufficient as determined by an actuarial feasibility study performed by an Actuary.

These funds are surplus and are not to be used to fund the Association's normal operations.

- C. If the level of surplus falls below the amounts specified in Section 7.B, the Association shall notify the Commissioner within 5 days, and file with the Commissioner within 45 days a plan to return the surplus to the required level. This plan shall include a report of the causes of the Association's insufficiency, the assessments necessary to replenish the minimum surplus and the steps taken to prevent a recurrence of such circumstances.

- D. In addition to the surplus designated in Section 7.B of this rule, at the effective date of the Association's approval, the Association shall have paid an amount of at least \$250,000 from the initial year's Contribution into a designated depository to fund the start-up expenses of the Association's operation. The remainder of the initial year's Contribution shall be collected no later than the end of the ninth month of the Association's operation.
- E. For an Association in existence as of the effective date of this rule, the Association shall file with the Commissioner a proposal for meeting, within a time frame acceptable to the Commissioner, the requirements of Sections 7.B through 7.D of this rule.
- F. The total amount of each Member's annual Contribution to the Association shall be communicated by the Members' Supervisory Board to the legislative body of each Member at least one month prior to the beginning of each fiscal year. The Association also shall file with the Commissioner, unless waived by the Commissioner, an opinion of an Actuary as to the reasonableness of the proposed funding level for each fiscal year.
- G. Each Association may, if permitted by its articles of association or other organizing documents, levy upon its Members an additional assessment whenever needed to supplement the Association's surplus to assure payment of its obligations. A Member may be assessed for any fiscal year during which the Member participated in the Association. Such assessment may be made after the end of the Association's fiscal year or after the Member has discontinued membership in the Association.

Section 8. Reserves

- A. Every Association shall calculate and maintain reserves for all liabilities, including but not limited to the following:
 - 1. Reserves for all losses and claims, whether or not reported;
 - 2. Reserves for all loss adjustment expenses for all claims, whether or not reported; and
 - 3. Reserves for the unearned portion of the gross Contribution or assessment, if any.
- B. Discounting of loss reserves is not allowed unless approved in advance by the Commissioner.
- C. An Association may reduce its reserves upon prior approval of the Commissioner and subject to the following limitations:

1. No reduction of reserves shall be allowed for insurance or reinsurance where the contract does not result in the complete transfer of liability.
2. No reduction of reserves shall be allowed for insurance or reinsurance unless the coverage remains intact in the event the Association is insolvent or financially impaired.
3. The reinsurer shall be an authorized reinsurer on Vermont's approved list or one approved by the Commissioner.
4. Copies of the complete contracts or policies of insurance or reinsurance, with all endorsements thereto or other evidence satisfactory to the Commissioner, entered into by the Association, shall be filed with the Commissioner prior to becoming effective. The Administrator shall notify, in advance, the Commissioner of the termination or change in the terms of any contracts or policies of insurance or reinsurance.

Section 9. Investments

- A. Upon request, the Association shall provide the Commissioner with a complete written description of its investment practices and policies. The investment practices shall follow the requirements set forth in 8 V.S.A. § 3463.
- B. The Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the Association.

Section 10. Changes to the Plan

- A. Revisions or alterations to the following items submitted under Section 3.C of this rule shall be filed with the Commissioner at least 45 days prior to their effective date and shall be reviewed by the Commissioner during said 45-day period. Should the Commissioner fail to act to approve or disapprove during the 45-day period, the revision or alteration shall be deemed to be approved. Items to be submitted for approval under this subsection are as follows:
 1. Revision or alteration in forms used for the Member Agreement as set forth in Section 3.C.3 of this rule.
 2. The election or appointment of new Members' Supervisory Board members or the administrator or officers of the Association as set forth in Section 3.C.5 of this rule. The filing with the Commissioner shall include biographical information for each individual so elected or so appointed.
 3. Changes in insurance coverages offered by the Intermunicipal Insurance Agreement, applicable Member deductible levels, or the maximum

liability which the Association will retain as set forth in Section 3.C.6.a.i of this rule.

4. Changes in the estimated annual total Contribution for all Members as set forth in Section 3.C.6.a.ii of this rule.
 5. Changes in the methodology by which the Association determines the aggregate amount of reserves to be set aside for the payment of claims as set forth in Section 3.C.6.a.iii of this rule.
 6. Changes in the amount of specific excess insurance purchased and maintained by the Association as set forth in Section 3.C.6.a.iv of this rule.
 7. Changes in methodology relating to the identification and description of reserves for self-insurance coverages provided to Members as set forth in Section 3.C.6.a.vii of this rule.
 8. Changes in criteria for admitting new Members and allowing existing Members to leave as set forth in Section 3.C.6.b.ii of this rule.
 9. Changes in the methodology for establishing the annual Contributions of the Association's Members as set forth in Section 3.C.6.b.iv of this rule.
 10. Changes in underwriting practices as set forth in Section 3.C.6.b.v of this rule.
 11. Changes in trade, marketing and claim practices, including any new persons marketing the Plan as set forth in Section 3.C.6.b.vi of this rule.
 12. Changes in the procedure for dissolution of the entire Intermunicipal Insurance Agreement or the process for distribution of surplus in the event of dissolution as set forth in Section 3.C.6.b.ix of this rule.
 13. Changes in the investment policy or guidelines employed in making investments as set forth in Section 3.C.6.b.x of this rule.
 14. Alteration or revision of the fidelity bond covering the Administrator or its employees as set forth in Section 3.C.9 of this rule.
 15. Any change in the address in Vermont where the books and records of the Association are maintained as set forth in Section 3.C.10 of this rule.
- B. Revisions or alterations to items submitted under the provisions of Section 3.C of this rule other than those set forth above shall be filed with the Commissioner.

- C. Revisions or alterations submitted under Section 10.A of this rule may become effective earlier than 45 days after filing if so approved by the Commissioner. Should the Commissioner disapprove a filed revision or alteration under Section 10.A of this rule, the Commissioner shall state the reasons therefor and issue an Order of Disapproval.

Section 11. Distribution of Surplus Funds

- A. Any surplus in excess of the amounts described in Section 7.B of this rule, accumulated within an Association's fiscal year, as determined from the annual audited financial statement, may be declared refundable by the Member's Supervisory Board. No distribution of the surplus funds shall be made earlier than 24 months following the end of the Association's fiscal year for which a surplus was declared. Such distribution shall not be made until certified by an Actuary. If the distribution is in excess of 10% of the Association's surplus, it shall be considered an extraordinary distribution and shall require prior approval of the Commissioner. Application for the extraordinary distribution shall be submitted to the Commissioner for approval and certified by an actuary.

The Association may make a distribution prior to 24 months after the end of a fiscal year, if certified by an Actuary and approved by the Commissioner

- B. Surpluses accumulated within an Association's fiscal year shall be used exclusively for the benefit of those Members belonging to the Association during that year. The accounting shall be separate for each year.
- C. Notwithstanding Section 11.B of this rule, the Commissioner may, in his or her discretion, require or permit an Association's surplus accumulated within a fiscal year be allocated to a different year.

Section 12. Annual Filing Requirements

- A. Each Association shall file annually with the Commissioner, and with the Members of the Association within 120 days after the end of the fiscal year, audited financial statements for the most recently completed fiscal year certified by an independent certified public accountant. If the Association fails to file such audited financial statements, the Commissioner may perform the audit and the Association shall reimburse the Commissioner for such cost.
- B. At a minimum, the audited financial statements shall contain the following exhibits for the current and prior fiscal years:
 - 1. Balance sheet;
 - 2. Statement of income;

3. Statement of changes in equity;
 4. Notes to financial statements; and
 5. Management and internal control letters.
- C. The financial statements shall be prepared in accordance with generally accepted accounting principles with the following exceptions:
1. Loss reserves shall not be discounted. However, the Commissioner may approve discounting of loss reserves if the Association's Actuary certifies that said discounting is in accordance with the customary practice of the traditional insurance industry, and that said discounting will not adversely affect the fiscal integrity of the Association.
 2. Any other exceptions to generally accepted accounting principles the Commissioner finds necessary to preserve the fiscal integrity of the Association.
- D. With the financial statements, the Association shall include a statement of opinion as to the loss and loss expense reserves certified by an Actuary.
- E. Each Association shall file a copy of the fidelity bond, or evidence acceptable to the Commissioner, covering the Administrator, the Association employees and Service Agents with the audited financial statement.
- F. In addition to the annual audited financial statement, the Commissioner may require any Association to file additional financial information, including, but not limited to interim financial reports, additional financial reports or exhibits or statements considered necessary to secure complete information concerning the condition, solvency, experience, transactions or affairs of the Association. The Commissioner shall establish reasonable deadlines for filing these additional reports, exhibits or statements. The Commissioner may require verification of any additional required information.
- G. Each Association shall file annually with the Commissioner the methodology for establishing the annual Contributions of its Members. Such Contributions must be based on reasonable assumptions and certified by an Actuary.

Section 13. Examination

- A. The Association shall retain and have available for examination by the Commissioner for at least five years after the close of a fiscal year the following:
1. All executed copies of Member Agreements;

2. An executed copy of the resolution of the legislative body of each Member authorizing membership in the Association; and
 3. All financial books, records and accounts.
- B. The Commissioner may examine the affairs, transactions, accounts, records and any other matters deemed necessary, of the Association and/or its independent accountant, including accounting workpapers and assets of the Association, as often as the Commissioner deems necessary. Such records must be available for examination at a location in Vermont. The manner and frequency in which the examination of financial condition shall be conducted and the release of any reports of financial condition shall be as provided in 8 V.S.A. §§ 3563 and 3565.

Section 14. Dissolution, Suspension, Revocation of an Association; Merger of Associations

- A. An Association's approval shall remain in effect until terminated at the request of the Members' Supervisory Board.
- B. Before an Association may voluntarily dissolve, it shall present a proposal of dissolution to the Commissioner for approval. Such a proposal shall provide for the payment of all incurred losses and expenses of the fund and its Members, including all incurred but not reported losses, as certified by an Actuary, to the extent of the Association's assets. No assets of the Association may be used for any other purpose until all losses and expenses are paid in full.
- C. Subject to the approval of the Commissioner, an Association may merge with another Association if the resulting Association assumes in full all obligations of the merging Associations. The Commissioner may hold a hearing on the merger and shall do so if any Member of either Association so requests.

Section 15. Application of Unfair Trade Practices Act

An Intermunicipal Insurance Agreement shall be subject to the provisions of 8 V.S.A. Chapter 129 and rules promulgated thereunder governing unfair trade, market and claim practices.

Section 16. Transition Provisions

All Intermunicipal Insurance Agreements approved prior to the effective date of this rule shall comply with the terms of this rule.

Section 17. Severability

If any provisions of this rule, or the application of it to any person or circumstances, is determined to be invalid by a court of competent jurisdiction, such invalidity shall not affect

other provisions of this rule which can be given effect without the invalid provision or application, and to that end the provisions of this rule are severable.

Section 18. Effective Date

This regulation shall become effective on May 6, 1991; revision shall become effective on July 23, 2019.