

TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 4 WORKERS' COMPENSATION
PART 9 GROUP SELF-INSURANCE

11.4.9.1 ISSUING AGENCY: Workers' Compensation Administration.
[8/1/96; 11.4.9.1 NMAC - Rn, 11 NMAC 4.9.1, 1/14/05]

11.4.9.2 SCOPE: These rules apply to the application, qualification, evaluation and regulatory requirements pertaining to group self-insureds authorized pursuant to NMSA 1978, Chapter 52, Article 6.
[8/1/96; 11.4.9.2 NMAC - Rn, 11 NMAC 4.9.2, 1/14/05]

11.4.9.3 STATUTORY AUTHORITY: The authority for this part derives from the director's powers under NMSA 1978, Sections 52-6-1 through 52-6-25 and 52-1-4A.
[8/1/96; 11.4.9.3 NMAC - Rn, 11 NMAC 4.9.3, 1/14/05]

11.4.9.4 DURATION: Permanent.
[8/1/96; 11.4.9.4 NMAC - Rn, 11 NMAC 4.9.4, 1/14/05]

11.4.9.5 EFFECTIVE DATE: August 1, 1996, unless a later date is cited at the end of a section.
[8/1/96; 11.4.9.5 NMAC - Rn & A, 11 NMAC 4.9.5, 1/14/05]

11.4.9.6 OBJECTIVE: The purpose of these rules is to provide criteria and procedures to apply to the issuance and maintenance of certificates of self-insurance to group employers under the group Self-Insurance Act, NMSA 1978, Chapter 52, Article 6.
[6/23/87, 8/1/96; 11.4.9.6 NMAC - Rn, 11 NMAC 4.9.6, 1/14/05]

11.4.9.7 DEFINITIONS: The definitions adopted below shall apply to all WCA rules, especially those for group self insurance.

A. "Same or similar type of business" means that each individual business to be insured by a group at the time the risk is bound, without regard to ownership, is appropriate under the by-laws and the underwriting guidelines of the group on file with the WCA. Each such business must have at least 50 percent of the workers' compensation manual premium for each individual business member in risks normally associated with either the general division groupings (designated by lettered headings in the standard industrial classification manual) or any other three or four digit classifications specifically designated from within the standard industrial classification manual, which has received prior approval from the director. Where more than one business shares common ownership, the businesses may be considered one entity for purposes of eligibility determination.

B. "Standard industrial classification manual" means the most current edition of standard industrial classification manual published by the executive office of the president of the United States, office of management and budget. Major groups of businesses are designated by a two digit code in the standard industrial classification manual.

[8/1/96, 11/15/96; 11.4.9.7 NMAC - Rn, 11 NMAC 4.9.7, 1/14/05]

11.4.9.8 GROUP SELF INSURANCE:

A. Application and maintenance:

(1) All the requirements for application and maintenance of a certificate of group self-insurance are contained in NMSA 1978, Section 52-6-5. In addition, the following shall apply:

(a) Submit with the application a non-refundable filing fee of five hundred dollars (\$500.00).

(b) The application shall contain the group's pro forma financial statement, following generally accepted accounting principles, presented in a format acceptable to the director.

(c) Specific excess insurance shall be written with statutory upper limits. The insurance shall be written by an acceptably rated company approved and regulated by the New Mexico department of insurance to write excess insurance in the state of New Mexico, or a company that is otherwise approved by the director. The policy must include the current New Mexico amendatory endorsement.

(d) The required fidelity bond for the administrator shall be written at a minimum of two hundred fifty thousand dollars (\$250,000).

(e) The required fidelity bond for the service company providing claims service shall be written at a minimum of two hundred fifty thousand dollars (\$250,000).

(f) A performance bond of two hundred fifty thousand dollars (\$250,000) shall be provided for the service company providing claims service, if requested by the director.

(g) A fidelity bond for any member of the board of trustees of the group having signatory authority with respect to the group's funds or investments, or as a condition precedent to any board of trustees action creating or changing such signatory authority, is required and shall be written at a minimum of two hundred fifty thousand dollars (\$250,000).

(h) A statement of the type of business in which employers in the proposed group are engaged and an explanation of how they meet the criteria of "same or similar" contained in NMSA 1978, Section 52-6-2(B).

(i) An actuarial report/study based on at least 3 years loss history of the group's proposed members, including loss projections for the group.

(2) After considering the group's application and all supportive documentation, the director shall act upon a completed application for a certificate of approval within sixty (60) business days. If, because of the number of applications pending, the director is unable to act upon an application within that period, the director shall have an additional sixty (60) days to act.

(3) The definitions in Subsections A and B of 11.4.9.7 NMAC shall be applied prospectively only, commencing with the effective date of this rule. Existing members of a group which would be ineligible for membership under this rule shall not be excluded from membership in the group on the basis of this rule. In the event that a member's coverage is not reinstated within thirty days of the delivery to the director of the notice of cancellation or termination required in NMSA 1978, Section 52-6-9 (B), the former member will be considered a new applicant for purposes of qualifying as a member of the group.

(4) Each group will screen applicants to their group based upon the definition of "same or similar type of business" contained in this rule. No group shall admit any prospective member that is not in the same or similar type of business.

(a) Each group will designate in writing for the director, a general category from the standard industrial classification manual, designated as a lettered division heading, which most closely fits the type of businesses represented by the sponsoring trade or professional association.

(b) The director will presume that businesses properly included in that division are in the same or similar type of business as are other businesses in the group.

(c) A group may request in writing that additional two digit major group codes, three digit industry group codes or four digit industry codes from the standard industrial classification manual, other than those under the group's designated lettered division heading.

(i) The request for designation of a business as a same or similar type of business for a group shall be accompanied by a written explanation which must satisfy the director that the businesses are significantly related to the sponsoring trade association's industry.

(ii) The director may consult widely accepted publications which classify types of businesses for the purpose of considering the approval or disapproval of such requested designations.

(d) Upon prior written approval by the director, a group may add to its roster an individual business which is not otherwise clearly eligible for membership. A request for approval of such individual business shall be accompanied by a written explanation demonstrating to the satisfaction of the director that the business, because of its particular circumstances should be deemed to be in the same or similar type of business as the other members of the group.

(e) The director shall approve or disapprove such requests in writing.

(f) The WCA will follow its established protocol to ensure prompt response to requests for such designations.

(5) Each group will certify to the director on each report of roster additions submitted, that any additions to the group's roster are in the same or similar type of business as the other members of the group.

(6) Groups may offer claims "buy back" programs to their members provided:

(a) a written narrative describing the program shall be provided to the participants and the WCA; and,

(b) details of claims bought back must be provided to the participating member, or its designee, or to the WCA upon request.

B. Evaluation factors: The director shall decline to approve an application for group self-insurance upon a finding that the proposed group does not meet all the requirements of the Group Self-Insurance Act and the rules thereunder. In determining whether a group can meet the requirements of the Group Self-Insurance Act

(NMSA 1978, Sections 52-6-1 through 52-6-25) and the rules thereunder, the factors to be considered by the director shall include, but not be limited to, the following:

- (1) organizational structure and management background;
- (2) compliance with NMSA 1978, Section 52-6-2(B);
- (3) services provided by the group;
- (4) statistical reporting and expertise;
- (5) workers' compensation loss history and risk;
- (6) source and reliability of financial information;
- (7) sufficiency of premium;
- (8) proposed bylaws, underwriting guidelines, membership application, and membership agreement;
- (9) the distribution of group members as to size, premium and loss exposure;
- (10) adequacy of reserve methodology;
- (11) proposed excess insurance coverage;
- (12) adequacy and form of security;
- (13) claims administration personnel, policies and procedures;
- (14) safety program;
- (15) financial condition of proposed members;
- (16) results of financial evaluation of the group.

C. Financial responsibility:

- (1) The group shall submit audited financial statements on an annual basis.
- (2) Every group self-insured shall have actuarially determined financial strength sufficient to meet their obligations.
- (3) The actuarial opinion and report required by NMSA 1978, Section 52-6-12, shall be filed annually and include the actuarial report from which the reserves for known claims and associated expenses and claims incurred but not reported and associated expenses were obtained.
- (4) The group shall set rates utilizing the advisory loss costs published by the national council of compensation insurance, and adhere to uniform classification system, uniform experience rating plans, and manual rules filed with the superintendent of insurance, provided, however:
 - (a) Permission to apply premium discounts shall be requested by the group, subject to approval by the director, and shall be based on the group's expense levels and loss experience.
 - (b) Permission to make and use its own rates shall be requested by the group, subject to approval by the director and shall be based on at least three years of the group's experience.
 - (c) All requests for permission regarding rates or discounts shall be accompanied by an actuarial opinion supporting the request.
 - (d) Retroactive rate decreases and retroactive premium discounts are prohibited.
 - (e) All requests for rate reductions or premium discounts shall be approved or disapproved by the director within sixty (60) days after the submission of the request and any additional data requested by the director.
- (5) Each group shall annually certify to the director the group's continued compliance with NMSA 1978, section 52-6-5 B(1) by submitting a compilation consisting of each member's assets, liabilities and net worth. No member's financial statements used for this compilation shall be more than 12 months old.
- (6) In any month where the group's membership roster changes, each group shall submit to the administration an update of additions and deletions to the group's membership roster.
- (7) Each group shall provide within 30 days of the end of each calendar quarter a roster of members including the number of employees employed by each member on the last day of the quarter.
- (8) The group shall promptly notify the director of insolvencies or bankruptcies of members.
- (9) The board of trustees shall adopt a policy statement regarding the admission to, or continued membership in, the group of any prospective member or current member with negative net worth. Such statement shall be provided to the director and to each member and prospective member of the group.
- (10) Permission to declare and issue a dividend shall be requested by the group not less than twelve months after the end of the fund year, subject to approval by the director, and shall be based on funds in excess of the amount necessary to fund all obligations for that fund year.
 - (a) All requests for dividend distributions shall be accompanied by financial information and an actuarial opinion supporting the request.
 - (b) All dividend refunds shall be approved or disapproved by the director within sixty (60) days after the submission of the request, and any additional data requested by the director.

(11) The group shall provide proof of renewal of all excess insurance policies, fidelity bonds, or security within 15 days of renewal and copies of all excess insurance policies, fidelity bonds or security within 45 days of renewal.

(12) The group shall provide loss runs on a semi-annual basis.

D. Certification: By signing and submitting an application, and as a condition of the continuing privilege of certification as a group self-insurer under the group self-insurance Act, the group agrees to:

(1) promptly discharge all of the group's liabilities to injured employees or their dependents in accordance with the requirements of the Act and to comply with the Act and any rules of the director adopted thereunder;

(2) obtain the director's approval prior to making any change in any excess insurance policy, fidelity bond, or security which results in diminished coverage;

(3) notify the director of changes in the kind or amount of services provided by any third party claims administrator;

(4) promptly notify the director of any material change in the group's financial condition or group operations;

(5) cooperate fully with administration representatives in any evaluation or audit of the group self-insurance program, and to resolve, in good faith, issues raised in those evaluations or audits; it is specifically contemplated that such evaluation and audit issues may include notice of inadvertent or mistaken failures to pay benefits which were not paid when due, where no apparent ground existed at the time to contest the payment in good faith; failure to correct such inadvertent or mistaken failures to pay, after notice, may constitute a failure to resolve such audit issues in good faith in violation of this rule, and may result in any sanction appropriate under the group Self-Insurance Act; any dispute concerning issues raised shall be referred by the self-insurance bureau chief to the director for determination if not first informally resolved;

(6) the group shall be responsible for compliance with the Act and the rules and shall be subject to sanction by the administration for acts or omissions in violation of the Act or the rules by itself or by any person or entity acting in an agency relationship with the group; it shall be a defense to any sanction proposed that the group has appropriately fulfilled its duty to monitor, educate and control its agents; nothing in this rule is intended to alter the liability for workers compensation benefits of groups or their agents.

E. Probationary certification: The group shall be responsible for compliance with the Act and the rules. Failure to comply with the Act or the rules may result in the issuance of a probationary certificate of group self-insurance.

(1) A probationary certificate means the revocation of the group's existing self-insurance certificate.

(2) The duration of the probationary period shall be within the director's discretion but shall not extend for more than one year's time.

(3) The group may be sanctioned for any violations that occur during the probationary period pursuant to NMSA 1978, section 52-6-21.

(4) If the group fails to come into compliance with the Act and the rules by the end of the probationary period, the group's status as a self-insured may be revoked.

(5) All conditions of the Act and the rules still apply and nothing in this rule is intended to alter the responsibilities for workers' compensation benefits of groups or their agents.

(6) The probationary certificate may be withdrawn and the original certificate of self-insurance may be reinstated if the group comes into full compliance with the Act and the rules. The reinstatement of the original certificate shall be at the sole discretion of the director.

(7) A probationary certificate of self-insurance shall be made by an order signed by the director or by his authority. Every such order shall state its effective date and shall concisely state: what is ordered; the grounds on which the order is based; and the provisions of the Act or rules pursuant to which the action is taken.

F. Waiver: Any requirement not mandated by statute contained in these rules may be varied or waived by specific written authorization of the director. Any interested person may request such a variance or waiver in writing.

[6/22/87, 6/23/87, 8/1/96, 11/15/96; 11.4.9.8 NMAC - Rn & A, 11 NMAC 4.9.8, 1/14/05; A, 12/29/06]

HISTORY OF 11.4.9 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: WCA 87-1, Workers' Compensation Self-Insurance, filed 6/22/87.

WCA 92-10, Workers' Compensation Administration Self-Insurance Rules, filed 2/24/92.

WCA 92.10, Rules Governing Self-Insurance, filed 10/30/92.

History of Repealed Material: [RESERVED]