

**TITLE 11      LABOR AND WORKERS' COMPENSATION**  
**CHAPTER 4    WORKERS' COMPENSATION**  
**PART 10      SELF-INSURANCE POOLING OF PUBLIC ENTITIES**

**11.4.10.1      ISSUING AGENCY:** Workers' Compensation Administration.  
[11/29/97; 11.4.10.1 NMAC - Rn, 11 NMAC 4.10.1, 1/14/05]

**11.4.10.2      SCOPE:** These rules apply to the qualification, evaluation and regulating requirements pertaining to the governmental entities insured for workers' compensation benefits by the New Mexico county insurance authority, the New Mexico self-insurer's fund and the New Mexico public school insurance authority or any other organization formed, organized or reorganized, contemplating the pooling of the risks of workers' compensation by governmental entities.  
[11/29/97; 11.4.10.2 NMAC - Rn, 11 NMAC 4.10.2, 1/14/05]

**11.4.10.3      STATUTORY AUTHORITY:** The authority for this part derives from the director's powers under NMSA 1978, Sections 52-1-2, 52-1-4(A), 52-1-6 and 52-5-4.1.  
[11/29/97; 11.4.10.3 NMAC - Rn, 11 NMAC 4.10.3, 1/14/05]

**11.4.10.4      DURATION:** Permanent.  
[11/29/97; 11.4.10.4 NMAC - Rn, 11 NMAC 4.10.4, 1/14/05]

**11.4.10.5      EFFECTIVE DATE:** November 29, 1997 unless a later date is cited at the end of a section.  
[11/29/97; 11.4.10.5 NMAC - Rn & A, 11 NMAC 4.10.5, 1/14/05]

**11.4.10.6      OBJECTIVE:** The purpose of these rules is to provide criteria and procedures to apply to the issuance and maintenance of certificates of self-insurance for governmental entities insured through the organizations identified in 11.4.10.2 NMAC.  
[11/29/97; 11.4.10.6 NMAC - Rn, 11 NMAC 4.10.6, 1/14/05]

**11.4.10.7      DEFINITIONS:** For the purposes of these rules:

- A. "workers' compensation" also means "workman's compensation";
- B. "administrator" means an individual, partnership or corporation engaged by a pool's board of trustees to carry out the policies established by that board to provide day-by-day management of the pool;
- C. "pool" means an entity, regarded as an "agency" under the State Audit Act, that provides insurance collectively to governmental entities for workers' compensation benefits;
- D. "service company" means a person or entity which provides services not provided by the administrator which may include claims adjustment; safety engineering; compilation of statistics and the preparation of premium; loss and tax reports; preparation of other required self-insurance reports; development of members' assessments and fees; and administration of a claim fund;
- E. "director" means the director of the workers' compensation administration;
- F. "workers' compensation benefits" means benefits paid pursuant to the Workers' Compensation Act or the New Mexico Occupational Disease and Disablement Law.

[11/29/97; 11.4.10.7 NMAC - Rn, 11 NMAC 4.10.7, 1/14/05]

**11.4.10.8      POOL SELF-INSURANCE:**

- A. A governmental entity not insured by an insurance company in the voluntary market nor certified as an individually self-insured employer shall be deemed in compliance with NMSA 1978, Section 52-1-4 if the director has issued a certificate of pool self-insurance pursuant to these rules.
- B. In order to obtain and maintain a certificate of pool self-insurance a governmental entity shall meet the following requirements:
  - (1) Within 30 days of the effective date of these rules the governmental entities shall direct the pool's administrator to provide the director with a current membership roster and contact information for each governmental entity insured by the pool. All governmental entities on the roster will be deemed to have applied for a certificate of pool self-insurance.

(2) A governmental entity that has not applied pursuant to Paragraph (1) of Subsection B of 11.4.10.8 NMAC shall apply to the director at least 30 days prior to the desired effective date of the certificate for pool self-insurance, on forms approved by the director.

(3) A governmental entity insured under a certificate of pool self-insurance shall be responsible for compliance with the provisions of Articles 1-5 of the Workers' Compensation Act, NMSA 1978, Chapter 52 and all rules promulgated thereunder and shall be subject to sanction by the director for violations, acts or omissions by itself or by any person or entity acting in an agency relationship with the governmental entity, including its administrator and service company.

(4) Specific occurrence excess insurance or specific occurrence reinsurance for all governmental entities insured through a pool in a form and in an amount acceptable to the director is required. The insurance shall be written by an acceptably rated company admitted to write insurance in the state of New Mexico or a company that is otherwise approved by the director. The policy must include the New Mexico amendatory endorsement.

(5) A fidelity bond or commercial crime policy for any officer, agent or member of the board of trustees of the pool having signatory authority with respect to the pool'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), unless the director prescribe a higher amount.

C. Certification and termination:

(1) All governmental entities who have applied for a certificate of pool self-insurance pursuant to Paragraph (1) of Subsection B of 11.4.10.8 NMAC shall be deemed to be eligible for a certificate of pool self-insurance.

(2) The certificate of pool self-insurance shall remain in effect until terminated at the request of the governmental entity or revoked by the director. The director shall not grant the request of any governmental entity to terminate its certificate of pool self-insurance unless the governmental entity has insured or reinsured all incurred workers' compensation and occupational disease and disablement obligations or has otherwise secured payment of their obligation in a manner approved in writing by the director. Such obligations shall include both known claims and associated expenses and claims incurred but not reported and associated expenses.

[11/29/97; 11.4.10.8 NMAC - Rn & A, 11 NMAC 4.10.8, 1/14/05]

**11.4.10.9 INFORMATION REQUIREMENTS:**

A. As a condition precedent to maintenance of a certificate of pool self-insurance, each pool shall compel its administrator and any service company to provide to the director the following information and access to records:

- (1) a copy of any reinsurance or excess insurance agreements;
- (2) an explanation of reserving methodology and accident year claims data on an annual basis;
- (3) rate change information within thirty days of approval by the board of directors of the pool;
- (4) loss runs in a format acceptable to the director within 60 days of receipt by the administrator of the director's request; and
- (5) an annual actuarial opinion.
  - (a) This opinion shall include actuarially appropriate reserves for (1) known claims and associated expenses; and (2) claims incurred but not reported and associated expenses.
  - (b) This actuarial opinion shall also include a rate adequacy evaluation.
  - (c) The actuarial opinion shall be given by a member of the American academy of actuaries.
- (6) a copy of any rate adequacy evaluations and reviews of loss and loss adjustment expenses prepared for the pool by an actuary who shall be a member of the American academy of actuaries.
- (7) notification to the director of any additions or deletions to the pool's membership roster; additionally, each pool 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.

B. Examination and reviews:

(1) The director or his designees may examine the affairs, transactions, accounts, records and assets and liabilities of each governmental entity that has been issued a certificate of pool self-insurance pertaining to the entity's activities under that certificate, whether considered individually or through its pool as often as deemed advisable, whether such information is maintained by a governmental entity, the pools administrator or the pool's service company.

(a) The governmental entity, pool, administrator or pool service company shall cooperate fully with the director's representatives in any evaluation or audit of the pool self-insurance program, and resolve, in good faith, issues raised in those evaluations or audits.

(b) Failure to resolve such audit issues in good faith will constitute a violation of this rule, and may result in sanctions.

(c) Any dispute concerning issues raised shall be referred by the deputy director for compliance to the director for determination, if not first informally resolved.

(2) In lieu of performing the examination, the director may request:

(a) financial audits conducted by a certified public accountant approved by the state auditor;

(b) audits of claims management by the pool performed by the pool's reinsurer or other outside claims auditing firm;

(c) loss control audits performed by the pool's reinsurer; or

(d) any other independent claims audit of a scope and by an auditing organization deemed acceptable by the director.

(3) Each governmental entity that has been issued a certificate of pool self-insurance, individually, or collectively through its pool, shall be reviewed at least annually by an auditor acceptable to the director to verify proper classifications, experience rating, payroll and rates.

C. A governmental entity that has been issued a certificate of pool self-insurance under these rules shall assist the director in any investigation of specific allegations of unfair claims processing, bad faith or fraud within the scope of NMSA 1978, Section 52-1-28.1, by directing the administrator of the pool to make all records concerning any such claim available to the director upon written request by the director or the records.

[11/29/97; 11.4.10.9 NMAC - Rn & A, 11 NMAC 4.10.9, 1/14/05]

#### **11.4.10.10 WAIVER AND ENFORCEMENT:**

A. Any requirement contained in these rules may be waived by specific written authorization of the director. Any interested person may request such a variance or waiver in writing. Such waiver requests will be considered, approved or denied dependent upon the nature of the request and the conditions pertinent to the request prevailing at the time of the request.

B. Enforcement: failure to comply with any provision of Articles 1-5 of the Workers' Compensation Act, NMSA 1978, Chapter 52, or the rules promulgated thereunder may be sanctioned by impositions of the monetary penalty pursuant to NMSA 1978, Section 52-1-61, or any other lawful remedy.

[11/29/97; 11.4.10.10 NMAC - Rn, 11 NMAC 4.10.10, 1/14/05]

#### **HISTORY OF 11.4.10 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:

11 NMAC 4.10, Self-Insurance Pooling of Public Entities, filed 7/17/96 - Repealed 11/29/97.