

This is an amendment to 11.4.13 NMAC, Sections 8, 9, and 10, effective 1/1/2023.

11.4.13.8 APPLICATIONS:

A. Any party proposing a controlled insurance plan pursuant to Section 52-1-4.2 NMSA 1978, shall submit an application for approval to the director on a form provided for that purpose not less than 30 days prior to the commencement of bidding procedures for the primary contractor.

(1) A provisional or contingent application for approval shall be allowed, provided that neither final approval nor permission to break ground may be given to any provisional or contingent application.

(2) Approvals of provisional or contingent applications are advisory only and no approval that is not designated as a final approval and that does not bear the signature of the director shall be deemed final.

(3) Every application for approval of a controlled insurance plan shall contain a detailed financial statement demonstrating that the aggregate construction cost, as statutorily defined, has been satisfied, and further showing that the sources of funding for the project conform with the definition of the term, "same project" contained in these rules. The financial statement shall be supported by an affidavit executed by the signatory to the application attesting to the accuracy and completeness of the financial statement.

B. No controlled insurance plan construction project shall break ground until final written approval of the controlled insurance plan, subject to amendment, is provided by the director. The director is authorized to seek injunctive relief to prohibit construction at a site until final approval of an application for a controlled insurance plan is given or the construction project is operated under ~~an~~ a non-controlled insurance plan otherwise complying with the act, in addition to any other relief sought.

C. Failure to provide and maintain current information on the application form on file with the director, and to update any change information within ten calendar days of the change shall constitute a violation of these rules. The applicant shall have a continuing duty to maintain the currency and correctness of the application on file with the director.

D. Amendments to an application to conform with any modifications to the job, modifications to the safety plan or modifications to the designated single construction site and all other information required by this rule or the application for approval of a controlled insurance plan are required prior to the commencement of work pursuant to the amended provisions.

(1) The insurance policy for a controlled insurance plan must be conformed to any revisions in the application prior to commencement of work pursuant to the revisions.

(2) All contractors and subcontractors shall be notified in writing upon any request for amendment or revision to the application, and shall be separately notified of the approved amendments or revisions prior to the commencement of work pursuant to any approved amendments or revisions.

E. The director or his designee shall be available to applicants for controlled insurance plans to provide counseling in aid of the development of acceptable applications, but in no event shall such assistance be construed as the director's approval of the application or as a promise that the director will approve an application.

F. The director or his designee shall attempt to complete the application review process within 30 days of submission of the final application, and shall inform the applicants in writing of the reasons for, and expected duration of, any delay beyond the 30 day period.

G. The applicants shall specify the names of at least two individuals authorized to accept notices and service of process applicable to the controlled insurance plan. For each named individual, both street and mailing addresses shall be specified, and the applicant shall notify the WCA of any changes in the authorized representatives for receipt of notices and process or the applicable addresses for such representatives within ~~three~~ 10 business days of any such change.

H. The applicant shall specify the name of at least one person, who may also be designated to perform other functions under this part, who is knowledgeable concerning the handling of workers' compensation claims under the act. The director shall approve the designated claims management professional after submission of credentials and resume, prior to the commencement of the work. The designated claims management professional shall be available within 24 hours of any accident at the single construction site and shall consult with the injured worker's employer within 72 hours of any accident at the single construction site, concerning the handling of the claim and return to work issues.

[11.4.13.8 NMAC - N, 11/15/2004; A, 1/1/2023]

11.4.13.9 CONTROLLED INSURANCE PLAN CONSIDERATION UNDER THE EXTRA- HAZARDOUS EMPLOYER PROVISIONS OF THE WORKERS' COMPENSATION ACT:

The controlled insurance plan shall be considered a single employer for purposes of WCA regulations concerning extra-hazardous employers, promulgated pursuant to [~~Subsection (B) of Section 52-5-1.3~~] Subsection (E) of Section 52-1-6.2 NMSA 1978. The North American industrial classification system (NAICS) code applicable to the general contractor shall be the industry code utilized for comparison of the controlled insurance plan loss record to its industry standard. The controlled insurance plan project shall be examined every 90 days, while construction is ongoing, for purposes of determining extra- hazardous employer status.
[11.4.13.9 NMAC - N, 11/15/2004; A, 1/1/2023]

11.4.13.10 SAFETY PLANS:

A. Criteria for approval. The following requirements must be met for initial approval of a safety plan and for final approval of an application for a controlled insurance plan. Failure to maintain continuous compliance with each of these requirements shall be considered a violation of these rules and the director shall be authorized to seek injunctive action to prohibit construction work until such failure is corrected.

(1) New Mexico OSHA compliance;

(2) Appointment of a site safety manager acceptable to the director;

(a) The site safety manager shall have a minimum of three-year's experience in programs covered by 29 CFR part 1910 or 29 CFR part 1926, as applicable.

(b) An applicant shall submit a resume and credentials of the proposed site safety manager not less than 14 days before commencement of work on the project. The director, or his designee, shall review the resume credentials within 14 days. Work on the project shall not commence until the director or his designee has approved a site safety manager.

(c) An applicant shall submit a resume and credentials for any proposed substitute or standby site safety manager prior to any construction activities at the single construction site overseen by the substitute or standby site safety manager.

(d) In no event shall the applicant allow work at the single construction site to proceed for more than eight continuous hours without the approved site safety manager, or approved substitute or backup site safety manager being physically present at the single construction site.

(e) All approved safety plans must provide that the approved site safety manager, or approved standby or substitute site safety manager shall have plenary authority to close down the construction project in whole or in part, in the event that hazards to health or safety of workers present an imminent danger to worker health or safety. The approved site safety manager, backup site safety manager or substitute site safety manager has a duty to close down the construction project, in whole or in part, upon discovery of an imminent danger to worker health or safety that cannot be immediately rectified.

(3) A plan for coordination of site safety programs among all contractors and subcontractors by the site safety manager, including access for contractor and subcontractor safety personnel.

(a) The plan shall provide for review of the controlled insurance plan safety plan and drug and alcohol testing provisions by safety personnel employed by, or contracted to, individual contractors and subcontractors.

(b) The plan shall provide that any safety provisions, and drug and alcohol testing programs required by the contractor or subcontractor that are more stringent in the safety provisions or drug and alcohol testing programs required by the approved safety plan shall be enforceable against the employees and working conditions of the contractor or subcontractor and shall not be superseded by the approved controlled insurance plan safety plan or the approved controlled insurance plan drug and alcohol screening program.

(4) Third party safety consultant

(a) The applicant shall engage the services of an independently contracted safety consultant ("third party safety consultant") to provide independent inspections and oversight on safety issues to assist the site safety manager and the WCA.

(i) The third party safety consultant shall conduct work environment evaluation inspections of the single construction site at least twice per month during construction activities.

(ii) The third party safety consultant shall notify the site safety manager immediately of any hazardous condition disclosed by the third party safety consultant's inspection

(iii) The third party safety consultant shall not be terminated in response to making a good-faith finding that a safety hazard exists or in response to reporting such safety violations as provided by these rules.

(b) The third party safety consultant shall have credentials at least equal to those required of the site safety manager.

(c) The third party safety consultant shall not be the backup site safety manager.

(d) The credentials of the third party safety consultant shall be presented to, and approved in writing by, the WCA prior to the commencement of construction

(e) In the event that the third party safety consultant is replaced during construction activities, the credentials of the replacement third party safety consultant shall be presented to the WCA within no more than ~~[five]~~ 10 working days of the earlier of the termination of the contract or the cessation of work by the prior third party safety consultant.

(f) The third party safety consultant shall prepare written reports at least every 30 days from the date of commencement of construction detailing any safety issues or hazards discovered during the inspections that occurred during the prior month. Said reports shall be provided to the WCA, all contractors and all sub-contractors.

(g) The third party safety consultant shall also generate a written report in the event that he or she discovers any condition or hazards that constitute an imminent danger to worker health or safety that the independent safety consultant believes would justify closure of the construction site in whole or in part by the site safety manager. Said report shall be provided to the WCA, all contractors and all subcontractors within 2 days of the discovery of the condition or hazard.

(5) Drug and alcohol screening, complying with provisions of Section 52-1-12.1 NMSA 1978. Compliance with the drug and alcohol screening plan shall be the responsibility of the applicant provided that the applicant shall implement any more stringent plan incorporated pursuant to Subparagraph (a) of Paragraph (3) of Subsection A of 11.4.13.10 NMAC.

(6) Continuous coverage of the construction site shall be provided by an on-site registered nurse, who shall have demonstrated experience in the treatment of workers' compensation claimants, during all working hours.

(a) Credentials and resume for the registered nurse must be presented to the WCA and approved prior to the beginning of construction.

(b) Credentials for any registered nurse serving in a backup capacity or as a substitute for the original approved registered nurse must be presented to the WCA and approved prior to the first instance of coverage by that nurse.

(c) Should the retention of a registered nurse constitute a hardship on the applicant because of location or any other circumstance, the applicant may petition the director for a waiver of this requirement pursuant to 11.4.13.11 NMAC and the substitution of a certified, full-time, emergency medical technician (EMT). The applicant must demonstrate compliance.

(7) Emergency medical services plan

(a) The plan must include a provision requiring prominent display at the work site giving notice to workers of emergency facilities to be used in the event of an accident, including a map directing workers to the appropriate emergency facilities.

(b) The plan must include a provision requiring prominent display at the work site of notices concerning any contracted physicians or medical facilities.

(c) The plan must contain a provision for providing notice of initial choice of health care providers to workers, in compliance with WCA regulations.

(d) The plan must contain evidence of planning and contractual preparation for emergency medical evacuation by air, when medically appropriate.

(8) Evidence of a plan for facilitating return to work of injured employees.

(a) The plan must provide for appropriate communication to workers to ensure to the extent possible they are fully apprised concerning return to work policies.

(b) The plan must provide for the direct involvement of the employer of the injured worker in return to work planning and implementation commencing as soon as possible after the injury to the worker.

(c) The plan must provide for continued communication concerning return to work between the insurer, the worker and employer for all injuries persisting beyond the completion of the project.

(9) The site safety manager must certify to the owner of the property upon which the controlled insurance plan project is being built, all contractors and subcontractors and to the independent safety consultant, and to the WCA, that each worker on the single construction site has been specifically safety trained for

each job function that they perform, within 10 days of the commencement, or change, of the workers job duties on the single construction site. The certification shall be on a form approved by the director.

(10) The plan must provide for communications provided to the applicant regarding substance abuse testing, medical treatment and medical conditions, or injury reports to be promptly and specifically communicated to the workers employer within four calendar days of the communication to the applicant. The applicant is solely responsible for this requirement. The applicant shall specify, to the WCA and to each contractor and subcontractor, before the commencement of work at the single construction site, the names of at least two persons working full time at the single construction site who are authorized to assist the applicant in fulfilling this responsibility.

B. Failure to obtain approval for a safety plan or to maintain compliance with an approved safety plan is a serious violation of these rules and the director is authorized to seek injunctive relief to prevent commencement or continuation of construction until such situation is remedied in addition to any other relief sought.

[11.4.13.10 NMAC - N, 11/15/2004; A, 12/29/2006; A, 1/1/2023]