

TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 4 WORKERS' COMPENSATION
PART 2 DATA REPORTING AND SAFETY REQUIREMENTS

11.4.2.1 ISSUING AGENCY: Workers' Compensation Administration.

[11.4.2.1 NMAC - Rp, 11.4.2.1 NMAC, 9/30/16]

11.4.2.2 SCOPE: These provisions govern all employers subject to the act.

[11.4.2.2 NMAC - Rp, 11.4.2.2 NMAC, 9/30/16]

11.4.2.3 STATUTORY AUTHORITY: The director is authorized by Section 52-5-4, NMSA 1978, to promulgate regulations to implement the act. The regulations implementing the safety program requirements are adopted pursuant to Section 52-1-6.2, NMSA 1978. The rules on gathering and reporting of statistical data are adopted pursuant to Section 52-5-3, NMSA 1978.

[11.4.2.3 NMAC - Rp, 11.4.2.3 NMAC, 9/30/16]

11.4.2.4 DURATION: Permanent.

[11.4.2.4 NMAC - Rp, 11.4.2.4 NMAC, 9/30/16]

11.4.2.5 EFFECTIVE DATE: September 30, 2016, unless a later date is cited at the end of a section.

[11.4.2.5 NMAC - Rp, 11.4.2.5 NMAC, 9/30/16]

11.4.2.6 OBJECTIVE: The objective of 11.4.2 NMAC is to establish reporting and safety requirements for employers. This rule creates a standardized method for reporting data on work accidents, notifying workers about legal requirements for making a claim, and complying with mandatory safety provisions of the act.

[11.4.2.6 NMAC - Rp, 11.4.2.6 NMAC, 9/30/16]

11.4.2.7 DEFINITIONS:

A. "American standard code for information interchange (ASCII)" means a code that follows the proposed standard for defining codes for information exchange between equipment produced by different manufacturers.

B. "Claims administrator" means the insurance carrier, third party administrator, self-insured association, self-insured employer, or any claims coordinator, if any, designated by the employer or another claims payer to provide claims processing services on workers' compensation claims. These services include receiving and sending workers' compensation claims information to the WCA, employer, insurance carrier, and injured worker.

C. "EDI" means electronic data interchange.

D. "Loss run" means a computer generated report, listing or file that provides uniquely identifying and financial data of each individual claim for a group of claims occurring during a particular period for an insured or employer.

E. "Industry" means a business, or all businesses, as the context requires, that have identical two digit NAICS codes as determined by the WCA.

F. "NAICS code" means a designator of the principal business of an employer assigned by the WCA pursuant to the current version of the North American industry classification system, a publication of the executive office of the president, office of management and budget, United States.

G. "Experience modifier" is a calculation that compares the losses of an individual risk (employer) to average losses for all other risks in that industry classification and state. The experience modifier is used to adjust the insurance premiums of an individual risk according to the risk's loss experience.

H. "FROI" means first report of injury data (IAIABC 148 format). FROI also refers to WCA form E-1 and WCA form E-1.2.

I. "SROI" means subsequent report of injury data required to complete the notice of benefit payment (IAIABC A49 format). SROI also refers to WCA form E-6.

J. "TA" means transmission accepted.

K. "TE" means transmission accepted with errors.

L. "TR" means transmission rejected.

[11.4.2.3 NMAC - Rp, 11.4.2.3 NMAC, 9/30/16]

11.4.2.8 DATA COLLECTION:

A. General provisions:

- (1) Paper copies of FROI and SROI will not be accepted by the WCA as of January 1, 2017. Beginning January 1, 2017, FROI and SROI data shall only be submitted through EDI or the WCA website.
- (2) It is the claims administrator's or an uninsured employer's responsibility to timely submit all data required under the data collection rules.
- (3) Time frames for submission of reports are not waived when the WCA acknowledges and returns an erroneous submission that needs correction.
- (4) It is the responsibility of the claims administrator to report to the WCA required financial, legal and medical claims activity for the insured including reporting of the first dollar of indemnity benefits paid by, or on behalf of, an employer who has a deductible policy.
- (5) It is the responsibility of the claims administrator to provide a loss run to the WCA upon request for reconciliation of a noted discrepancy.
- (6) Claims administrators that file any required report at the time of the mediation conference, either with the mediator or at the clerk of the courts office, have not met their filing obligation with the WCA and must electronically file all required FROI and SROI data. The date of actual filing is the date of acceptance by the WCA, which will be used to determine compliance with filing requirements.
- (7) Electronic filing
 - (a) A claims administrator shall file electronically with the WCA.
 - (b) EDI trading partner profile must be on record with the WCA before electronic filings can be accepted. A sample EDI trading partner profile is available on the WCA website.
 - (c) The transmission format is the international association of industrial accident boards and commissions (IAIABC) 148 and A49 record scheme. Transmission header and trailer records are also required under this format. The transmission record formats are also available on the WCA website.
 - (d) Electronic transmissions must be in the ASCII format. The file may be transmitted by electronic transmission via the internet.
 - (e) Electronic mailboxes must be registered with the management information systems (MIS) bureau of the WCA.
 - (f) Receipts for all TA, TE, and TR transmissions will be returned electronically.
 - (g) TR codes must be corrected within 30 days.

B. FROI:

- (1) FROI data must be submitted, within 10 days of notification, for all injuries or occupational diseases that result in more than seven cumulative days of lost time.
- (2) FROI data must be timely submitted even if the claim is disputed.
- (3) The claims administrator must furnish a copy of the FROI data to the worker and the employer at the time of electronic submission to the WCA. If the employer is uninsured, the employer must furnish a copy of the FROI data to the worker.
- (4) When an employer has notice of an accident and receives a complaint, FROI data must be submitted immediately after receiving an initial pleading involving an injury or illness that is not otherwise already supported by FROI data.

C. SROI must be submitted:

- (1) within 10 days of the date of initial payment of the indemnity portion of any claim;
 - (2) within 50 days of the filing of an order of the WCA, or of the date upon which a recommended resolution became a compensation order for payment made to or on behalf of an injured worker, unless an order staying enforcement of a compensation order is filed with the clerk; and
 - (3) within 30 days of the date of the closing payment of the indemnity portion of the claim;
- and
- (4) within 30 days of any change in benefits; and
 - (5) within 90 days of the date of the initial payment of a medical-only claim with cumulative payments over \$300, provided, however, that a E-6 closing report shall be submitted with respect to all claims for which expenses have been previously reported;
 - (6) for medical-only claims with cumulative payments over \$300, the initial and closing E-6 may be submitted on one form.

D. Annual expenditure report: Claims administrators shall file an annual expenditure report with the economic research and policy bureau of the WCA. The annual expenditure report must:

- (1) be submitted electronically using the WCA website;

(2) identify the carrier(s), groups, pools or self-insured employer(s), by the name and the federal employers identification number (FEIN);
(3) be submitted for all expenditures reported in a calendar year (January 1-December 31);
and
(4) be received by the WCA no later than February 15th of the year following the reporting period.

E. Failure to file. Any failure to timely file a statistical report as required by 11.4.2 NMAC shall be considered a violation of these rules and may be penalized pursuant to Section 52-1-61 NMSA 1978.

F. Waiver: Any provision of 11.4.2.8 NMAC may be waived, either permanently or temporarily, by written order of the director upon good cause shown.

[11.4.2.8 NMAC - Rp, 11.4.2.8 NMAC, 9/30/16]

11.4.2.9 SAFETY:

A. Annual inspections:

(1) All employers, as identified in Section 52-1-6.2 NMSA 1978, are required to have an annual safety inspection. All other employers are encouraged to do so.

(2) Any employer who purchases or renews a policy of workers' compensation insurance with a premium liability of \$15,000 or more shall, within 60 days of the policy issuance or renewal, submit proof of an annual safety inspection to the WCA. Self-insured employers shall submit proof of an annual safety inspection to the WCA within 60 days of completing an inspection.

(3) Standards for annual inspections: The minimum standards for the annual safety inspection are contained in the WCA publication, annual safety inspections. This publication may be obtained from the WCA's website.

(4) Who may conduct the inspection:

(a) A safety consultant from the WCA.

(b) A senior manager or dedicated safety professional employed by the business.

The WCA may be contacted to provide training on how to conduct a proper safety inspection.

(c) A third party safety organization or safety professional.

(d) A safety professional from the insurance company.

(5) Employers shall submit an affidavit listing the address of all facilities that were included in the inspection to the WCA safety program on a form approved by the director. Though the responsibility for reporting is with the employer, the insurance carrier may report completed inspections, provided the insurance carrier or a safety organization or safety professional retained by the carrier conducted the inspection.

(6) Failure to comply with the annual safety inspection requirement may subject an employer to penalties under Section 52-1-6.2 NMSA 1978.

B. Risk reduction program:

(1) The extra-hazardous employer program is hereinafter referred to as the risk reduction program ("RRP").

(2) An employer may be classified for the RRP if its experience modifier (e-mod) is higher than the state average for that industry or if a safety audit reveals a need for assistance based on the employer's accident frequency or severity of injury caused by the accident(s).

(3) The WCA shall notify the employer and its insurance carrier if that the employer meets the criteria, under the above guidelines, to be enrolled in the RRP and is selected for enrollment in the RRP.

(a) Notice shall be given to the employer, and the insurer or self-insurance entity, if any, by personal service upon any person of suitable age and discretion at the business location or by certified mail addressed to the owner, proprietor, managing partner, president, majority stockholder, chief operational officer or manager of the business.

(b) Employers who have received a notice of classification shall have five days to file a written request for reconsideration with the director. The director may hold hearings upon a request for reconsideration and make a determination as appropriate. Appeal of a ruling by the director shall be by writ of certiorari to the district court, pursuant to S.C.R.A. Rule 1-075.

(4) Within 30 days of service of a notice of classification or within 30 days of the director's decision if a request for reconsideration is filed, an employer who is classified and enrolled in the RRP shall obtain a safety consultation. The consultation must be performed by a WCA safety consultant, the employer's insurer or a professional independent safety consultant approved by the director. A WCA safety consultant may assist employers in interpreting the requirement for a safety consultation and in conducting the consultation.

(5) The safety consultant performing the safety consultation shall submit within 10 days a written report to WCA and the employer detailing any identified hazardous conditions or practices identified through the safety consultation. The written report must be in a form acceptable to the director.

(6) Within 30 days of the submission of the written report concerning the safety consultation, the employer participating in the RRP shall submit a specific accident prevention plan to resolve the hazards and practices identified in the written report.

(7) The WCA may investigate accidents occurring at the work site(s) of an employer for whom a plan has been formulated under Paragraph (6) of Subsection B of this section and the WCA may otherwise monitor the implementation of the accident prevention plan as it finds necessary.

(8) Six months after the formulation of an accident prevention plan prescribed by Paragraph (6) of Subsection B of this section, the WCA shall conduct a follow-up inspection of the employer's premises. The WCA may require the participation of the safety consultant who performed the initial consultation and formulated the safety plan.

(a) If the WCA determines that the employer has complied with the terms of the accident prevention plan or has implemented other acceptable corrective measures, the WCA shall so certify.

(b) If, at the time of the inspection required under Paragraph (8) of Subsection B of this section, the employer continues to exceed the injury frequencies that may reasonably be expected in that employer's business or industry, the WCA shall continue to monitor the safety conditions at the work site(s) and may formulate additional safety plans reasonably calculated to abate hazards. The employer shall comply with the plans and may be subject to additional penalties for failure to implement the plan or plans.

(9) For good cause shown, the director may extend any time limit required by this part for up to 30 additional days.

(a) All applications for extension shall be submitted in writing and shall state with specificity the reasons for requested additional time.

(b) The director may hold hearings to determine the appropriateness of extensions of time for submission of specific accident prevention plans.

(c) The director's determination on a request for an extension is final.

(d) In the case of an RRP employer whose employees are assigned to furnish services to other employers, the responsibility for the development and submission of an accident prevention plan as required by these rules shall be with the employer who controls and provides direct on-site supervision of the workers who are exposed to the hazards and practices identified in the written report of the safety consultant.

(10) Any employer who fails to develop, submit, cause to be submitted, implement or comply with a specific accident prevention plan as provided for in these rules shall be subject to imposition of a penalty of up to \$5,000. Each incident of failure to formulate, submit, cause to be submitted, implement or comply with a specific accident prevention plan persisting for a period of 15 days shall constitute a separate violation and subject the employer to additional penalties. The enforcement procedures established in 11.4.5 NMAC shall be utilized in all proceedings under this subsection.

(11) An employer shall no longer be designated to participate in the RRP when the provisions of Paragraphs (4) through (8) of Subsection B of 11.4.2.9 NMAC, inclusive, have been satisfied.

C. The employer, its insurer and all agents of the employer or insurer have the duty of compliance with reasonable requests for information from workers' compensation administration personnel. WCA personnel shall collect data regarding all work-place fatalities in New Mexico.
[11.4.2.9 NMAC - Rp, 11.4.2.9 NMAC, 9/30/16]

11.4.2.10 ACCIDENT NOTICE POSTERS AND ACCIDENT NOTICES:

A. Every employer shall post and keep posted in conspicuous places on its business premises, in areas where notices to employees and applications for employment are customarily posted, an accident notice poster stating the requirement that workers notify employers of accidents. The accident notice poster is available at the WCA at no charge to the employer on a form approved by the director.

B. Every employer must keep attached to the accident notice poster an adequate supply of notice of accident forms approved by the director.

C. Any employer may submit to the director a proposal for approval of a notice of accident form or accident notice poster. No form shall be approved except in writing, signed by the director.

[11.4.2.10 NMAC - Rp, 11.4.2.10 NMAC, 9/30/16]

HISTORY OF 11.4.2 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the State Records Center:

WCA 86-5, Final Notice of Final Payment of Compensation, filed 5/26/87.

WCD 89-5, Final Reports, filed 6/20/89.

WCA 86-6, Completed Supplement Report to Accident, filed 5/26/87.

WCD 89-6, Annual Reports, filed 6/20/89.

History of Repealed Material:

11.4.2 NMAC - Repealed effective 9/30/16.