

This rule was filed as 13 NMAC 12.4.

TITLE 13 INSURANCE
CHAPTER 12 MOTOR VEHICLE INSURANCE
PART 4 AUTOMOBILE SELF-INSURANCE

13.12.4.1 ISSUING AGENCY: New Mexico Public Regulation Commission, Insurance Division, Post Office Box 1269, Santa Fe, NM 87504-1269.
[4/1/99; Recompiled 11/30/01]

13.12.4.2 SCOPE: This rule applies to all persons seeking to be self-insured.
[4/1/99; Recompiled 11/30/01]

13.12.4.3 STATUTORY AUTHORITY: Sections 59A-2-9, 66-5-207, and 66-5-207.1 NMSA 1978
[4/1/99; Recompiled 11/30/01]

13.12.4.4 DURATION: Permanent.
[4/1/99; Recompiled 11/30/01]

13.12.4.5 EFFECTIVE DATE: April 1, 1999, unless a later date is cited at the end of a section or paragraph.
[4/1/99; Recompiled 11/30/01]
[Compiler's note: The words or paragraph, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

13.12.4.6 OBJECTIVE: The purpose of this rule is to provide criteria and procedures for the issuance of certificates of self-insurance to persons who qualify for exemption from the Mandatory Financial Responsibility Act.
[4/1/99; Recompiled 11/30/01]

13.12.4.7 DEFINITIONS: As used in this rule:

- A. **"Act"** means the Mandatory Financial Responsibility Act, Sections 66-5-201 NMSA 1978 et seq.
- B. **"Applicant"** means any person subject to the act who seeks to qualify for exemption from the act by obtaining a certificate of self-insurance from the superintendent.
- C. **"Change of ownership"** means the occurrence of any change in:
 - (1) the officers, directors, or holders of more than ten percent of the voting stock of the corporation, if the self-insured is a corporation;
 - (2) general partners or limited partners contributing ten percent or more of the total value of contributions made to the limited partnership, or entitled to ten percent or more of the profits earned, or other compensation by way of income paid, by the limited partnership, if the self-insured is a limited partnership; or
 - (3) the trustees or partners or owners of more than ten percent interest in the entity, if the self-insured is a legal entity which is not a corporation or limited partnership.
- D. **"Driver"** has the meaning given in Section 66-1-4.4K NMSA 1978.
- E. **"Financially solvent"** means a self-insured's continuing ability to pay all existing and future claims to which it is or may become obligated by operation of its motor vehicles on the highways of New Mexico, and that there are no circumstances clearly indicating to the superintendent that there is an imminent danger that the self-insured will likely become insolvent.
- F. **"Qualified actuary"** means a member of the casualty actuarial society.
- G. **"Tangible net worth"** means net worth less intangible assets and other assets of questionable quality or liquidity and may include other liabilities of the company.
- H. **"Safety program"** means a program of activities designed to reduce accidents, and may include driver education courses on safe driving practices or special techniques for driving in dangerous conditions, wearing seat belts, enrollment in accident prevent programs, installation of safety devices, and drug testing.

[4/1/99; Recompiled 11/30/01]

13.12.4.8 SCOPE OF SELF-INSURANCE:

- A. A motor vehicle owner may self-insure only its own liability, including its vicarious liability as an employer for an operator who is an employee, in accordance with this rule.
 - B. Self-insurance does not include uninsured or underinsured motorists coverage.
- [4/1/99; Recompiled 11/30/01]

13.12.4.9 CONTENTS OF APPLICATION:

- A. An application for a certificate of self-insurance shall be made on the form prescribed by the superintendent. The application shall contain full and specific answers to all questions.
 - B. The application shall be signed, under oath, by:
 - (1) the applicant if the applicant is an individual or a sole proprietorship;
 - (2) a general partner if the applicant is a partnership;
 - (3) an officer of the applicant if the applicant is a corporation.
 - C. The application must be accompanied by a non-refundable filing fee of two hundred dollars (\$200.00), made payable to the insurance division.
 - D. The superintendent may request additional information regarding any of the evaluation factors enumerated in this rule and any other information the superintendent deems relevant or necessary.
- [4/1/99; Recompiled 11/30/01]

13.12.4.10 OTHER REQUIRED DOCUMENTS: The application shall be accompanied by the following documents:

- A. a certified copy of the applicant's most recent audited financial statement; If the last audited statement is more than six months old, there shall be included an affidavit signed by the applicant's treasurer stating that there has been no material lessening of the tangible net worth or other adverse change since the date of the statement. If there has been such a material or adverse change since the date of the statement, an explanation shall be attached or a new statement prepared;
 - B. if the applicant is a corporation, a resolution adopted by the board of directors, in a form approved by the superintendent, authorizing and directing the corporation to undertake to self-insure itself and to comply with the rules of the superintendent;
 - C. if the applicant is a subsidiary corporation, a parental guarantee from the subsidiary's upper-most parent in a form acceptable to the superintendent. If the applicant is a brother-sister corporation applying as one self-insurer, mutual guarantees from each corporation in a form acceptable to the superintendent;
 - D. a plan of operation for the self-insurance program, as provided in this rule;
 - E. detailed resumes, on biographical affidavit forms prescribed by the superintendent, of all the principals of the applicant;
 - F. a binder from an insurance company authorized to transact insurance business in New Mexico specifying the limits and the terms and conditions of excess insurance coverage to be obtained if the application is approved;
 - G. if the applicant is a corporation, a certificate of good standing from the corporations bureau;
 - H. if automobiles are leased or rented to others, a copy of the lease or rental agreement containing the terms under which automobiles are leased or rented.
- [4/1/99; Recompiled 11/30/01]

13.12.4.11 EVALUATION FACTORS: In determining if an applicant will be able to meet its obligations as a self-insured, both at the time of application and continuously thereafter if applicant is granted a certificate of self-insurance, the factors to be considered by the superintendent shall include, but not be limited to, the following:

- A. whether the applicant has a tangible net worth of at least two million dollars (\$2,000,000.00);
- B. whether the applicant is financially solvent;
- C. whether the applicant has a risk management system;
- D. whether the applicant has an adequate claims management system;
- (1) If a third party administrator or claims administration service is to be used, it must be licensed in New Mexico.
- (2) If claims are handled in-house, the self-insured must employ a New Mexico-licensed adjuster.
- E. whether the applicant has a reserve method for claims;
- F. whether applicant's automobiles are leased or rented to others;

- G. the ratio of applicant's tangible net worth to its annual self-insurance retention;
- H. the ratio of applicant's current assets to its current liabilities;
- I. the ratio of applicant's debt to its tangible net worth;
- J. the ratio of applicant's tangible net worth to its annual automobile bodily injury and property damage projected losses;
- K. applicant's profit and loss history, including credit reports and credit ratings;
- L. applicant's automobile bodily injury and property damage exposure, premium, and loss history;
- M. applicant's organizational structure and the character and reputation of its management;
- N. applicant's claims administration personnel, policies, and procedures;
- O. applicant's safety program;
- P. the source and reliability of financial information about applicant;
- Q. the number of applicant's employees and the number who regularly drive automobiles, or if applicant is an individual, the number of persons who regularly drive applicant's automobiles;
- R. the adequacy of applicant's reserves;
- S. the adequacy of applicant's excess insurance coverage;
- T. the adequacy of applicant's surety bond or other security;
- U. the catastrophic loss potential of applicant.

[4/1/99; Recompiled 11/30/01]

13.12.4.12 PLAN OF OPERATIONS FOR SELF-INSURANCE PROGRAMS: Alicant shall prepare and maintain an up-to-date, detailed plan of operations for its self-insurance program. At a minimum, such plan shall include:

- A. an overview and narrative description of the proposed plan, with comments on all major aspects of operations, including administration, data and record keeping, claims, investment, reinsurance, and any other important topic;
- B. a description of the structure and organization of the company, the type of company (stock, mutual, etc.), holding company, affiliates, and subsidiaries;
- C. the qualifications and experience of management personnel;
- D. a description of the self-insured's claims management program;
- E. an explanation of the use of any management agreements, or agreements with claims adjusters or third party administrators, and any other significant contractual arrangements;
- F. the names of any reinsurer(s) and descriptions of the types, terms and conditions, and cost of coverage, and the maximum retained exposure;
- G. a detailed summary of the applicant's automobile premium, exposure and loss history for at least the last three (3) years;
- H. an explanation of the applicant's safety and loss control program and a copy of the safety manual, if one exists; include the name of the person in charge of the safety program and vehicle inspection schedule;
- I. an actuarial evaluation of the applicant's projected loss for the coming year.

[4/1/99; Recompiled 11/30/01]

13.12.4.13 CERTIFICATION PROCEDURE:

- A. Upon receipt of the completed application, filing fee and other required documents, the superintendent shall approve or disapprove the application or shall advise the applicant of the requirements to be met before approval will be granted.
- B. Upon the superintendent's approval of the application, and receipt of proof that all requirements have been met, the superintendent shall issue a certificate of self-insurance. A certificate of self-insurance shall be continuous until terminated or revoked as provided in this rule.
- C. The superintendent shall deny an application for self-insurance if the applicant has failed to demonstrate to the superintendent's satisfaction that it has met, and will be able to continue to meet, all requirements of this rule.

[4/1/99; Recompiled 11/30/01]

13.12.4.14 FINANCIAL RESPONSIBILITY REQUIREMENTS: Prior to issuance of a certificate of self-insurance, and continuously thereafter if applicant is granted a certificate of self-insurance, the applicant must comply with each of the following requirements:

A. **Security:** The applicant shall furnish security for payment of claims, in one of the following forms:

(1) by depositing securities specified in Section 59A-10-3 NMSA 1978 as eligible for deposit, in the amount of two hundred thousand dollars (\$200,000.00), or twenty-five percent (25%) of projected losses and loss adjustment expenses, whichever is greater;

(2) by a financial guaranty bond in favor of the superintendent in the amount of one hundred thousand dollars (\$100,000.00) or twenty-five percent (25%) of projected losses and loss adjustment expenses, whichever is greater, guaranteeing automobile loss payments in New Mexico, on a form prescribed or approved by the superintendent; or

(3) by other security prescribed by the superintendent, provided, however, that the superintendent shall approve the amount and form of the proposed security prior to the applicant being issued a certificate of self-insurance.

B. **Excess insurance coverage:** The applicant shall obtain excess insurance coverage issued by a carrier acceptable to the superintendent with a limit of not less than one million dollars (\$1,000,000.00) per occurrence, and provide photocopies of the declarations page and all endorsements providing or limiting coverage in New Mexico. The superintendent shall determine the maximum amount of retention for each self-insured.

C. **Initial reserve:** If applicant will be newly self-insured, the applicant shall set aside as an initial reserve an amount not less than seventy-five percent (75%) of the first year's **projected** losses and loss adjustment expense, as determined by a qualified actuary.

D. **Loss reserve fund:**

(1) The applicant shall establish and maintain a loss reserve fund sufficient to provide for the prompt payment of existing and projected loss claims which shall be fully covered by liquid assets or other assets agreeable to the superintendent.

(2) The applicant shall prepare and maintain records showing the calculation of the required amount of loss reserve fund. The fund shall cover incurred but not reported (IBNR) claims.

(3) The superintendent may waive the requirement of a loss reserve fund, or accept another method of setting reserves, upon receipt of a written request setting out specific facts supporting the exception to the requirement.

[4/1/99; Recompiled 11/30/01]

13.12.4.15 MINIMUM LIMITS OF SELF-INSURANCE COVERAGE:

A. For motor carriers required to obtain an operating authority from the motor transportation division of the public regulation commission, the minimum limits of self-insurance coverage per vehicle owned by the applicant shall be the same as the minimum limits of insurance coverage required by Section 232.03 of SCC Rule 232, Insurance Requirements, or its successor provision.

B. For motor carriers not required to obtain an operating authority from the motor transportation division of the public regulation commission, the minimum limits of self-insurance coverage shall be one hundred thousand dollars (\$100,000) combined single limit per vehicle owned by the applicant.

C. For rental cars and other private passenger vehicles, the minimum limits of self-insurance coverage shall be twenty-five thousand dollars (\$25,000)/fifty thousand dollars (\$50,000) bodily injury liability and ten thousand dollars (\$10,000) property damage liability per vehicle owned by the applicant.

D. The superintendent may require higher limits of coverage than specified in this section based on evidence of the need to protect the public from a higher exposure than the norm or other existing or anticipated circumstances requiring higher limits of liability coverage. The superintendent may take into account:

(1) the financial stability of the applicant;

(2) the previous loss history of the applicant;

(3) the safety record of the applicant;

(4) the size, nature of operations, and other characteristics of the applicant.

[4/1/99; Recompiled 11/30/01]

13.12.4.16 DISCLOSURE BY SELF-INSURED CAR RENTAL COMPANIES: If a self-insured car rental company takes the position that the insurance coverage of a lessee or other authorized driver is primary for the purpose of meeting the minimum financial responsibility requirements of the act, then this position must be prominently disclosed on the front of the car rental contract.

[4/1/99; Recompiled 11/30/01]

13.12.4.17 COMPLIANCE AND REPORTING REQUIREMENTS: By accepting a certificate of self-insurance, a self-insured agrees to:

- A. promptly discharge all of its liabilities and responsibilities in accordance with the requirements of this rule;
 - B. notify the superintendent within fifteen (15) calendar days in case of contemplated liquidation, sale or transfer of ownership, or material reduction in New Mexico operations; and arrange for the payment of all existing liability and any disability or liability arising thereafter by guaranty bond, deposit of securities, or otherwise, as required by the superintendent;
 - C. notify the superintendent within fifteen (15) calendar days prior to making any material change in any excess insurance policy or surety bond or other security required by the superintendent as a condition of self-insurance;
 - D. notify the superintendent within fifteen (15) calendar days of any change in the kind or amount of services provided by any service company named in the application;
 - E. promptly notify the superintendent of any material, adverse change in its financial condition;
 - F. provide full disclosure to the superintendent, or the superintendent's agents and staff, of all matters required to be disclosed, and to cooperate fully in any lawful review, evaluation, examination, or audit of any matter pertaining to the applicant's compliance with this rule or any lawful order or communication of the superintendent;
 - G. notify the superintendent within thirty (30) calendar days if there is a change of ownership of a self-insured, and submit biographical affidavits for the new owners;
 - H. meet any other reasonable criteria deemed necessary by the superintendent to guarantee payment of automobile claims
- [4/1/99; Recompiled 11/30/01]

13.12.4.18 ANNUAL REPORTS: Each self-insured shall prepare an annual report on the form provided by the superintendent. The report shall be filed within ninety (90) days after the end of the self-insured's fiscal year and shall be accompanied by the following documents:

- A. a certified annual financial statement;
 - B. actuarial reports, unless waived by the superintendent, attesting to the loss reserve requirements and projected losses and loss adjustments expense for the coming year;
 - C. a report of automobile claims activity;
 - D. a copy of its current plan of operations; and
 - E. a copy of the current declarations page and all endorsements providing or limiting excess insurance coverage in New Mexico.
- [4/1/99; Recompiled 11/30/01]

13.12.4.19 EXAMINATIONS AND REVIEWS:

- A. The superintendent may direct at any time that an applicant or a self-insured be reviewed or evaluated by a qualified person approved by the superintendent. As part of such review or evaluation, the superintendent reserves the right at any time to direct such qualified person:
 - (1) to audit or review the applicant's or self-insured's records regarding any representation made on its financial statement;
 - (2) to audit or review or take the testimony under oath of the applicant or self-insured, or any of its agents or employees, regarding any matter within their knowledge and pertaining to the obligations of the applicant or self-insured under this rule; and
 - (3) to review the application form and all supporting documents submitted by an applicant or self-insured.
 - B. By signing and submitting an application for self-insurance, or by accepting a certificate of self-insurance, the applicant or self-insured agrees to bear the costs of any review or evaluation conducted pursuant to this section.
- [4/1/99; Recompiled 11/30/01]

13.12.4.20 TERMINATION OR REVOCATION OF A CERTIFICATE:

A. A certificate of self-insurance may be terminated at the request of the self-insured. The superintendent shall not grant the request of a self-insured to terminate its certificate unless the self-insured makes arrangements to otherwise guarantee payment of any known or unknown obligations covered by the certificate. The self-insured shall file proof of such arrangements with the superintendent, subject to the superintendent's prior written approval.

B. A certificate may be revoked by the superintendent for the grounds specified in Section 66-5-207.1 NMSA 1978 , or for any of the following reasons:

- (1) failure of a self-insured to comply with any provisions or requirements of this rule, or with any lawful order or communication of the superintendent;
- (2) insolvency or bankruptcy of the self-insured or any surety or guarantor;
- (3) impairment of any aspect of the self-insured's financial responsibility requirements; or
- (4) failure to abide by the provisions of Section 59A-16-20 NMSA 1978 regarding unfair claims practices.

C. Revocation of a certificate of self-insurance shall be made by an order signed by the superintendent. 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 provision of this rule pursuant to which the action is taken.
[4/1/99; Recompiled 11/30/01]

13.12.4.21 REINSTATEMENT: Any person who seeks reinstatement of a revoked certificate of self-insurance shall apply to the superintendent on the form prescribed by the superintendent. Such person shall demonstrate compliance with all requirements of this rule as if the person were a new applicant, except that in lieu of providing all the specific information required by the application form, an applicant for recertification may incorporate by reference any responsive and still-current information which was filed with the superintendent on the original application form. A non-refundable filing fee of one hundred fifty dollars (\$150.00) must accompany an application for reinstatement of a revoked certificate.
[4/1/99; Recompiled 11/30/01]

13.12.4.22 HEARINGS: Any person aggrieved by a decision of the superintendent made pursuant to this rule may request a hearing before the superintendent in accordance with the provisions of Chapter 59A, Article 4 NMSA 1978.
[4/1/99; Recompiled 11/30/01]

HISTORY OF 13.12.4 NMAC:

Pre-NMAC History: The material in this rule was originally filed with the State Records Center as part of ID 67-1, New Mexico Official Administrative Rules and Regulations Code, filed 12/1/67.
Rule No. SCC-86-3, Insurance Department Regulation 2-3, Automobile Self-Insurance, filed 8/11/86.
SCC Rule 95-06-IN, Automobile Self-Insurance, filed 12/28/95.

History of Repealed Material:

13 NMAC 12.4, Automobile Self-Insurance, was repealed effective March 31, 1999 and repromulgated as 13 NMAC 12.4, Automobile Self-Insurance, effective April 1, 1999.