

Title 210 - NEBRASKA DEPARTMENT OF INSURANCE

Chapter 47 - GROUP SELF-INSURANCE RULE IMPLEMENTING THE INTERGOVERNMENTAL RISK MANAGEMENT ACT

001. Authority. This rule is ~~promulgated pursuant to the authority granted in the Intergovernmental Risk Management Act,~~ adopted under Neb.Rev.Stat. §§ 44-4308 and 44-4314.

002. Purpose. The purpose of this rule is to ~~set forth~~ adopt ~~procedural requirements which the Director deems necessary~~ procedures to carry out the provisions of the Intergovernmental Risk Management Act ~~pertaining to group self insurance, including but not limited to matters such as the application for a certificate of authority, reserves, dividends, claims processing, modifications to the program and periodic reports.~~

003. Definitions.

003.01 ~~The~~ For the purposes of this rule, in addition to the definitions ~~in the Intergovernmental Risk Management Act as set forth~~ in Neb.Rev.Stat. § 44-4303 and in Neb.Rev.Stat. § 44-103 ~~shall apply in the construction of this rule as if fully set forth herein. Those definitions and the following definitions shall govern the construction of the terms used in this rule.;~~

~~003.02 Act means Intergovernmental Risk Management Act.~~

003.03 ~~2~~ Administrator means an individual, partnership, corporation, ~~or~~ unincorporated association, limited liability company, or other entity, engaged by a risk management pool ~~for the purposes of carrying out the policies established by the pool's governing board and to provide day to day management of the pool~~ to provide services in connection with the management or operation of the pool.

~~003.04 Department means Department of Insurance.~~

~~003.05 Director means Director of Insurance.~~

003.06 ~~3~~ Dividend means a share of earned surplus allocated to each member participating in the pool.

003.074 Hazardous to the public shall mean that, based on its present or reasonably anticipated financial condition, a group self-insurance pool, although it may not yet be financially impaired or insolvent, is unlikely to be able to (a) meet obligations to policyholders with respect to known claims and reasonably anticipated claims or (b) pay other obligations in the normal course of business.

~~003.08 Pool shall mean self insurance pool in which each member makes financial contribution for the payment of all losses incurred by any member which are protected against by the pool.~~

003.095 Qualified Actuary shall mean a person:

003.095A(1) Who provides services to a pool described in Neb.Rev.Stat. § 44-4304(1), is a fellow or associate of the Casualty Actuarial Society, a member of the American Academy of Actuaries and independent of the insurance company electing to discount its reserves; or

003.095A(2) Who provides services to a pool described in Neb.Rev.Stat. § 44-4304(2), is a fellow or associate of the Society of Actuaries, a member of the American Academy of Actuaries, independent of the pool and its members, and independent of any insurance company electing to discount its reserves, and independent of any reinsurance company contracted with the pool; or

003.095B Who meets all ~~of~~ the following requirements:

003.095B(1) Has demonstrated to the ~~Director~~ director that he or she is possessed of the educational background and experience necessary for the practice of actuarial science ~~including, but not limited to, the evaluation of casualty loss reserves;~~

003.095B(2) Is independent of the insurance company electing to discount its reserves, the pool and its members, and any reinsurance company contracted with the pool; and

003.095B(3) Has the prior written approval of the ~~Director~~ director to sign claim or loss reserve opinions required by this rule.

003.10 Service company means a person or entity which provides services not provided by the administrator, including ~~but not limited to~~ (a) claims adjustment, (b) loss control -- safety management, (c) compilation of statistics and the preparation of premium and loss reports, (d)

preparation of other required self-insurance reports, (e) development of members' assessments and fees, and (f) administration of a claim fund.

003.11 Surplus shall mean the amount obtained by subtracting, from the admitted assets, actual liabilities, including any reserves which by law must be maintained.

004. Application for certificate of authority. A risk management pool organized pursuant to the Intergovernmental Risk Management Act may apply to the ~~Director~~ director for a certificate of authority to provide group self-insurance to its members. ~~A pool shall not accept contributions for group self-insurance coverage and shall not provide such insurance coverage to its members until the certificate of authority has been issued by the Director director.~~ The application ~~shall be accompanied by an application filing fee of one thousand dollars, and~~ shall include the pool's name, location of its ~~principle~~ principal office, date of organization, and the name and address of each member. The following information shall be submitted with the application, and shall specify the types of coverage involved, where applicable:

004.01 A copy of the agreement entered into for the purpose of establishing and operating a risk management pool as required by Neb.Rev.Stat. '§ 44-4306;

004.02 A copy of the pool's articles of incorporation, articles of association or by-laws;

004.03 Disclosure of the lines of insurance coverage to be provided as specified under Neb.Rev.Stat. '§ 44-4304;

004.04 Pro forma financial statements and projections for at least the first ~~five (5)~~ 5 years of operation;

004.05 Historical and expected loss experience of the proposed members to the extent reasonably available;

004.06 Appropriate actuarial opinions by a qualified, independent actuary, including a determination of minimum premium or participation levels required to ~~commence~~ begin operations and to prevent the pool from being hazardous to the public;

004.07 A copy of the agreement ~~entered into~~ with any administrator or service company and biographical information on such individuals or if an entity, the individuals providing the services for such entity;

004.08 Address in Nebraska where books and records of the pool will be maintained at all times;

004.09 Disclosure of proposed standard insurance, excess insurance, ~~excess stop-loss reinsurance arrangements~~, and reinsurance arrangements and a copy of such agreements as they become available;

004.10 Disclosure of member contribution levels and the criteria used to determine the contribution levels;

004.11 A copy of any insuring agreements, forms, and certificates of insurance coverage to be issued by the pool to each member of the pool;

004.12 Disclosure of the extent to which initial pool funding will be raised through the issuance of bonds; and

004.13 Such other information as the ~~Director~~ director may reasonably require.

005. Reserves. A risk management pool shall maintain the same reserves as required of a Nebraska domestic ~~property and casualty~~ insurance company offering the same coverage as the group insurance offered by a pool to its members, except that a pool may discount loss reserves if the pool's annual statement ~~required under Section 012~~ is accompanied by a certified statement of opinion by a qualified actuary which accurately reflects the effect of discounting of claim or loss reserves on the pool's financial condition. In the event a pool discounts its claim or loss reserves, the certified actuarial opinion defined in this section shall include the following:

005.01 An assessment of the adequacy of the undiscounted reserves;

005.02 An assessment of the appropriateness of the assumed interest rate, considering at least the following:

005.02A Valuation basis of bonds;

005.02B Yield on assets; and

005.02C The match of asset maturities to corresponding liabilities.

005.03 An assessment of the appropriateness of the liabilities to surplus ratio of the company;

005.04 An assessment of the appropriateness of the anticipated payment schedule, considering at least the following:

005.04A The pool's own paid claim or loss development history to the extent relevant and credible;

005.04B To the extent that such history is not relevant or credible, the experience of other insurers after allowance for any differences in form of coverage, nature of risks insured, limits written or retention levels after excess stop-loss reinsurance or reinsurance; and

005.04C Timing of excess stop-loss reinsurance or reinsurance recoverables and, if applicable, any additional excess stop-loss reinsurance or reinsurance premiums that may become due.

005.05 A description of the ~~formula(s)~~ formulas used for discounting, including any provision for adverse deviation;

005.06 An assessment of the appropriateness of the claim or loss reserve to surplus ratio of the pool;

005.07 ~~An~~ For a pool described in Neb.Rev.Stat. § 44-4304(1), an evaluation of any additional reinsurance premiums which may be due if loss development covered under retrospectively rated reinsurance proves adverse; and

005.08 Any other factors needed to accurately reflect the effect of discounting on the financial condition of the pool or as required by the ~~Director~~ director.

006. Dividends. A pool may not distribute dividends to its members until it has received approval by the ~~Director~~ director. A pool may not declare or pay any dividends except from earned surplus, ascertained in accordance with statutory insurance accounting principles. ~~In order to pay dividends to its members, the pool shall make application to the Director for approval, which~~ The application for approval to distribute dividends shall specify the date established for payment of the dividend;

a statement as to whether the dividend is to be in cash or property, and if in property, how valuation was determined; the dates and amounts of all previous dividends; financial statements as of the month preceding the application; a brief statement as to the effect of the proposed dividend upon the pool's reserves and the reasonableness of surplus in relation to the pool's outstanding liabilities; and, the adequacy of the surplus relative to the pool's financial needs.

007. Surplus. A pool shall maintain adequate surplus and reserves and receive adequate financial contributions from its members ~~in order~~ to operate in a manner which is not hazardous to the public.

008. Investments. The surplus and other funds, ~~or part thereof~~, of a pool shall be invested as authorized ~~for investments~~ by Nebraska domestic ~~property and casualty~~ insurance companies offering the same coverage as the group insurance offered by the pool to its members.

009. Notice to ~~d~~Department.

009.01 A pool shall notify the Department 30 days in advance of any assessments to cure a deficiency and of any changes in:

009.01A Contribution levels;

009.01B Coverages offered by the pool;

009.01C Administrator or service company, and any material change in such agreements with the administrator or service company;

009.01D The pool's articles of incorporation, articles of association and by-laws;

~~090.01E~~ 009.01E Any amendments to the agreement establishing in the pool;

~~090.01F~~ 009.01F Standard insurance, excess insurance, excess stop-loss insurance, excess stop-loss reinsurance agreements, and reinsurance agreements; or

~~090.01G~~ 009.01G The extent to which pool funding will be raised through the issuance of bonds.

~~090.02~~ 009.02 The notification shall be accompanied by a statement ~~setting forth~~ explaining the effect of such change on the pool and its ability to operate in a manner which is not hazardous to the public. A copy of any amended documents shall be provided and accompanied by appropriate supporting opinions and information to the extent necessary and reasonably available.

009.03 ~~Such notified~~ The changes shall become effective 30 days after submitted to the Department unless disapproved by the director. The ~~Director~~ director shall disapprove any such notified change if ~~as a result of such change~~ the director determines the pool will not:

009.03A Have adequate surplus and reserves and receive adequate financial contributions from its members ~~in order~~ to operate in a manner which is not hazardous to the public; or

009.03B Satisfy the requirements of Nebraska law, this chapter, the agreement establishing the pool, or the pool's by-laws.

010. Workers' compensation. A pool providing group self-insurance for Worker's Compensation coverage shall comply with the rules and regulations of the Nebraska Workers' Compensation Court.

011. Claims. A pool shall ~~process and~~ act upon claims in accordance with the guidelines ~~applicable~~ for domestic insurance companies.

012. Annual report of affairs and examinations.

012.01 ~~Every pool shall make and file with the Department, on or before March 1 of each year, a report under oath of its affairs and operations during the last preceding calendar year, upon a form furnished by the Department.~~ The report required under Neb. Rev. Stat. § 44-4310 shall show all contributions received by ~~it~~ the pool for membership in the pool during the previous calendar year. Such annual statements shall use insurance statutory accounting principles and shall include an actuarial or loss reserve specialist opinion on claim or loss reserves and loss adjusting expense reserves.

012.02 A pool discounting claim or loss reserves shall disclose the discounting of claim or loss reserves in its annual and other financial statements in a manner which will accurately reflect the effect of discounting of claim or loss reserves on the pool's financial condition.

~~012.03 In addition to the annual report of affairs, every pool shall make and file such periodic reports on forms furnished by the Department as the Director may require.~~

012.03 ~~4~~The reasonable expenses for examination of the business affairs, records, and assets of each pool conducted by the Department pursuant to Neb.Rev.Stat. '§ 44-4310(2) shall be ~~fixed and~~ determined by the ~~Director~~ director. Each pool shall be responsible for the payment of the determined expenses to the ~~Director~~ director within a reasonable time after the receipt of the statement for such expenses. The expenses shall be limited to a reasonable allocation for the salary of each examiner plus actual expenses.

013. Payment to ~~Director~~ director; computation.

013.01 ~~Pursuant to Neb.Rev.Stat. '44 4320, every risk management pool shall pay to the Director of Insurance, on or before March 1 of each year, an amount equal to one percent of annual contributions received by the pool during the immediately preceding calendar year for coverage of all risks, excluding workers compensation risks, included within the pool's group self insurance program.~~ On or before March 1 of each year, every risk management pool shall pay to the director the amounts required pursuant to Neb.Rev.Stat. § 44-4320 and § 48-162.02.

013.01A A pool which has a scheme of operations that contemplates a return of a portion of the contributions of pool members without such members being claimants under the pool's insuring agreements may deduct such return contributions from the pool's contributions for the purpose of calculating the payment due to the ~~Director of Insurance~~ director under Neb.Rev.Stat. § 44-4320 and § 48-162.02.

013.01B A pool which has a scheme of operations that includes the purchase of standard insurance subject to premium tax under Neb.Rev.Stat. ' § 77-908 or ' § 44-5506 may deduct the cost of such insurance from the pool's contributions for the purpose of calculating the payment due to the ~~Director of Insurance~~ director under Neb.Rev.Stat. § 44-4320 and § 48-162.02.

~~013.02 Pursuant to Neb.Rev.Stat. '44 4320, every risk management pool providing workers' compensation coverage shall pay to the Director of Insurance, on or before March 1 of each year, an amount equal to one percent of the prevailing premium rate which would be paid for all policies of insurance to insure workers' compensation risks. The prevailing premium rate is subject to periodic change, and is available from the Department of Insurance or Workers' Compensation Court upon request.~~

~~013.02A In addition to the requirements of Subsection 013.02, pools providing workers' compensation coverage within the pool's group self-insurance program shall be subject to the following:~~

~~013.02A(1) The Nebraska Workers' Compensation Court may, from time to time, require that contributions be made to the Second Injury Fund, pursuant to Neb.Rev.Stat. '48-128. In the event such an assessment is made, every risk management pool providing workers' compensation group self-insurance coverage to any of its members shall on or before March 1 of each year pay to the Director of Insurance director an amount equal to one percent of the prevailing premium rate which would be paid for a policy of workers' compensation insurance to insure such risk, but in no event less than \$25.00.~~

~~013.02A(2) The Nebraska Workers' Compensation Court may, from time to time, require that a risk management pool make contribution to the Vocational Rehabilitation Fund, pursuant to Neb.Rev.Stat. '48-162.02. Every risk management pool providing workers' compensation group self-insurance coverage to any of its members shall, on or before March 1 of each year in which such payment is required, pay to the Director of Insurance an amount equal to one percent of the prevailing premium rate which would be paid for a policy of workers' compensation insurance to insure such risk.~~

~~013.03 The computation of payments shall be made on forms furnished by the Department of Insurance and shall be filed with the Department, together with a sworn statement by the pool's chief operating officer attesting to the accuracy of the computation. The Department shall furnish such forms to each pool prior to the end of the year for which such amount is payable together with any information relative to computation of the amount as may be necessary.~~

014. Termination of membership in the pool.

~~014.01 In order for a member to may voluntarily terminate participation in the pool, such member shall give by giving written notice of the desired termination date to the Department, the other pool members and the pool's administrator at least 90 days prior to before the desired termination date. Within 30 days after receiving such notice of a member's voluntary termination of participation under Neb.Rev.Stat. § 44-4309(1), the pool's governing board shall submit a written report to the Department which:~~

014.01A discloses whether the terminating member and remaining members of the pool have paid all contributions and assessments due the pool, have discharged all other obligations owed to the pool, and have complied with the laws of Nebraska, this rule, and the by-laws of the pool; and

014.01B projects the effect on the pool due to the member's withdrawal from the pool.

014.02 A member of the pool may be involuntarily terminated from the pool as provided for in Neb.Rev.Stat. '§ 44-4309(2).

015. Voluntary dissolution of the pool.

015.01 A pool shall not ~~be voluntarily dissolved~~ voluntarily dissolve or cease to function unless the governing board obtains the approval of the ~~Director~~ director and ~~thereafter~~ obtains the approval of the pool's members in accordance with the agreement establishing the pool and the pool's by-laws, which shall require a two-thirds majority vote. The governing board may submit a written application seeking the ~~Director's~~ director's approval to voluntarily dissolve, at least 90 days in advance of the proposed dissolution date, setting forth the following:

015.01A Desired date of pool's dissolution;

015.01B Resolution of the governing board to terminate the pool and seeking the ~~Director's~~ director's approval of such termination; and

015.01C A plan of dissolution adopted by the governing board which ~~sets forth~~ describes the pool's arrangements for satisfying its obligations, including ~~but not limited to~~ the insurance or reinsurance of its obligations with insurers under appropriate agreements ~~filed with and~~ approved by the ~~Director~~ director, or such alternative arrangements which provide for the payment of all claims, liabilities and debts such as a contingency or trust fund for future claims and obligations. Such obligations shall include both known claims and associated expenses ~~associated therewith~~ and claims incurred but not reported and associated expenses ~~associated therewith~~. ~~Additionally, the~~ The plan shall provide for the distribution of any assets remaining after payment of claims, liabilities and debts and the return of any unearned premium contributions. The return of surplus contributions must be based on an equitable formula.

015.02 The ~~Director~~ director shall, within 30 days from the date the application for voluntary dissolution was submitted to the Department, issue a written determination regarding the

application to voluntarily dissolve, and if approved, the pool shall proceed by placing the matter before the pool members for a vote within 30 days after the approval of the ~~Director~~ director.

015.03 The governing board of the pool shall certify the results of the vote to the Department and proceed accordingly.

~~016. Hearings. Administrative hearings initiated before the Department as a result of actions taken under the provision of the Act or this rule shall be subject to the provisions of the Administrative Procedure Act, Neb.Rev.Stat. '84 901 et seq. and Title 210, Nebraska Administrative Code, Chapter 26.~~

~~017. Severability clause. If any provisions of this rule, or the application thereof to any persons or circumstances, is held invalid, such invalidity shall not affect other provisions or application of this rule which can be given effect without the invalid portion or application, and to that end, the provisions of this rule are severable.~~