

NEW MEXICO WORKERS COMPENSATION ASSIGNED RISK POOL BY-LAWS

The purposes of these By-Laws are to (1) provide for the self-sufficient, economic, fair, and nondiscriminatory administration of the assigned risk pool and (2) provide for the operation and administration of the assigned risk pool in compliance with the provisions of Article 33 of Chapter 59A, Laws of New Mexico, § 59A-33-1, et seq., N.M.S.A. 1978.

ARTICLE I NAME

This Pool shall be known as the New Mexico Workers' Compensation Assigned Risk Pool, a non-profit unincorporated association.

ARTICLE II OBJECT AND LIMITATIONS

1. Purpose

The purpose of the Pool shall be to provide for the insurance by Servicing Carriers of workers' compensation insurance risks that have, in good faith but without success, sought insurance in the usual manner from any two or more insurers authorized to transact in New Mexico the business of workers' compensation insurance and to provide for the equitable distribution of such risks among commercial line insurers.

2. Limitations

The reinsurance provided by the Pool shall apply only to standard workers compensation and employers liability policies (including, however, liability under the United States Longshore and Harbor Workers' Compensation Act as amended if and as covered by such policies) issued to risks by Servicing Carriers of the Pool and in conformity with the requirements of the Pool and the regulations of the Board of Governors applicable to such policies.

Notwithstanding the provisions of Article II or any other provision in these By-Laws inconsistent herewith, the reinsurance provided by the Pool shall also apply to coverage for all occupational disease liability, state and federal, for responsible coal mine operators as determined in accordance with Title IV of the Federal Mine Safety and Health Act, 30 U.S.C., Sections 801, et seq. and 901-944, as amended, and any laws or regulations amendatory thereto or supplementary thereto, to the extent the Board of Governors may authorize, and subject to the conditions it may impose.

ARTICLE III MEMBERSHIP

1. Membership

Every company licensed to write commercial line insurance, including excess workers' compensation insurance, in New Mexico shall automatically become a member of the Pool and shall be referred to herein as a member. Pool members are not required to become members of the National Council on Compensation Insurance, Inc., or to subscribe to its services. However, in matters relating to the Pool, members shall follow the procedures and methods prescribed by the Pool, which may be those promulgated by the National Council on Compensation Insurance, Inc.

2. Termination of Membership by Termination of License

Membership of any company shall terminate upon termination of its license to write commercial line insurance in New Mexico.

3. Obligations After Termination of Membership

Any company whose membership in the Pool has been terminated shall, nevertheless, with respect to risks subject to these By-Laws prior to midnight of the effective date of such termination, continue to be governed by these By-Laws and the rules and procedures promulgated thereunder.

4. Insolvency

- a. To the extent not contrary to New Mexico law, in the event any member company shall become insolvent, as hereinafter defined, membership of such company in the Pool shall be deemed terminated at the time such company becomes insolvent subject to the further provisions of Section 4(f). As used herein, "insolvent" means being the subject of receivership, conservatorship, rehabilitation, liquidation, or similar proceedings, whether voluntary or involuntary, in any jurisdiction.
- b. In the event a Servicing Carrier becomes insolvent, the General Manager-Secretary, acting on behalf of each of the members as directed by the Board of Governors, shall have the option to:
- (1) Pay to the receiver, conservator, rehabilitator, liquidator or other appropriate representative all losses and expenses for which such insolvent company shall have become liable upon risks to which these By-Laws apply; or
 - (2) Subject to the approval of the receiver, conservator, rehabilitator, liquidator or other representative, and subject to the approval of any court having jurisdiction over the proceedings, terminate the obligation of the members of the Pool to such insolvent company to reinsure such insolvent company for losses and expenses for which the insolvent company shall have become liable upon risks to which these By-Laws apply.
- c. The outstanding liability to the members of the Pool of any insolvent member, whether in its capacity as a Servicing Carrier or a member or both, and except for the portion unexpended of any amount of premium retained for servicing by such insolvent member (if a Servicing Carrier), shall, in event of such insolvency, and subject to any other or further provision with respect thereto which may be from time to time embodied in the rules and procedures adopted hereunder, be assumed by and apportioned among the remaining members of the Pool in the same manner in which liability for assessments is apportioned; and the participation of such insolvent member in the Pool or the funds thereof except as to any refund (if the right to such refund shall have then accrued), shall terminate. No refund shall be made to such insolvent company until all of its liabilities to the members of the Pool and all liabilities assumed by the members of the Pool by virtue of the provisions of this section shall have been fully settled and satisfied.
- The Pool members shall have all the rights allowed by law against the estate or funds of such insolvent carrier for recovery of funds disbursed (including the payment of losses and servicing expenses) on risks carried by insolvent members as herein provided. The General Manager-Secretary may assert and enforce such rights on behalf of the members of the Pool.
- d. Any insolvent member company which fails or has failed to make timely payment of any assessment made under these By-Laws shall become liable to the members of the Pool, as of the earliest date on which such failure to pay occurs, for an additional amount equal to the commuted value on such date of all future assessments to be made against such member company. For the purposes hereof, such commuted value shall be the total amount of unearned premium reserves and loss reserves then allocated to such member company hereunder, as determined by the General Manager-Secretary and approved by the Board of Governors. The liability of the insolvent member company for such commuted value under this provision shall be deemed fixed, liquidated, and noncontingent as of the date of such failure to pay. The General Manager-Secretary may assert and enforce such liability on behalf of the members of the Pool.
- e. To the extent not contrary to New Mexico law, the Board of Governors shall have the discretion to terminate the membership of any or all companies which are under the same management or part of the same group, affiliation or common ownership, of the insolvent company. No termination of an insolvent company or any or all companies described in this section shall be deemed in abrogation of the membership requirement in Article III.
- f. Anything in this section to the contrary notwithstanding, the Board of Governors may, in event the plan of liquidation or rehabilitation of such insolvent member makes such action in their judgment feasible and desirable, elect not to terminate the membership of such insolvent company, and permit such company to continue to be a member of the Pool subject in all respects to these By-Laws (exclusive of this section) and rules as then constituted.
- g. No member of the Board of Governors representing an insolvent company or any company under the same management or part of the same group, affiliation or common ownership, may vote in any proceeding under this section.
- h. Nothing in this section relating to the insolvency of a member company shall, without the express approval of the Board of Governors, increase the total liability of all members of the Pool (excluding the obligations of the insolvent member) to an amount greater than what the liability would have been if the insolvency had not occurred.

- i. Any or all member companies shall, at the discretion of the Board of Governors, be required to periodically provide, at intervals to be determined by the Board of Governors, information on the amount of reserves available to pay losses and expenses which may be assessed pursuant to Article XI for all risks which are subject to these By-Laws. Member companies shall provide all further information necessary for the Board of Governors to determine whether a company's reserves are adequate to meet its obligations to the Pool, and for the Board of Governors to determine if there is any significant likelihood that the company's future reserves will be inadequate to meet future obligations. Member companies shall cooperate fully in assisting the Board of Governors in making these determinations, and shall cooperate fully in the conduct of any auditing procedure necessary to these determinations. Should the Board of Governors determine that a company's reserves are not adequate to meet its obligations to the Pool, or that there is a significant likelihood that future reserves will be inadequate to meet future obligations, or should the Board of Governors determine that the member company has not cooperated to the extent necessary to make these determinations, the Board of Governors shall have the authority to ensure that the member company has reserves adequate to protect the Pool by taking actions which may include, but need not be limited to, any or all of the following:
- (1) Ordering that all premium distributions or refunds due the member company be paid into escrow or trust to secure the member's obligations to the Pool.
 - (2) Ordering that all premium distributions or refunds due to the member company be paid in trust into the Pools' general reserves to secure the member's obligations to the Pool.
 - (3) Ordering that the member company obtain a letter of credit approved by the Board of Governors to secure the company's future liabilities to the Pool.
 - (4) Requiring the member company to provide other security, collateral, or assurances of performance and payment as the Board deems appropriate.

ARTICLE IV

OFFICES, MEETINGS AND VOTING RIGHTS

1. Offices

The offices of the Pool shall be located at the offices of the Superintendent of Insurance, Santa Fe, New Mexico, or at such other location as may hereafter from time to time be determined by the Board of Governors.

2. Regular Meetings

The Pool shall meet annually at its offices in Santa Fe, New Mexico, on the fourth Wednesday of June, or at such other time or place as the Board of Governors may determine. In case the annual meeting for any year shall not be duly held, the Board of Governors shall cause a special meeting to be held as soon thereafter as possible, in lieu of and for the purpose of such annual meeting, and all proceedings at such special meeting shall have the same force as if taken at the regular annual meeting.

3. Special Meetings

Special meetings may be called at any time by the Chair of the Board of Governors, and special meetings shall be called by the Chair upon the written request of three members of the Pool.

4. Notice of Meetings

Except as otherwise provided by Article IX, notice of all annual and special meetings shall be given or caused to be given by the Chair, in writing, mailed or delivered to, or by telefacsimile directed to, each member at its latest address appearing upon the records of the Pool, or by telephone communication to any executive officer of such member company. If notice is given by writing and mailed to the member, such notice shall be placed in the mail not less than five days prior to the date of the meeting. If given by telefacsimile or telephone communication, it shall be so given not less than two days prior to the meeting.

5. Quorum

A quorum at any annual or special meeting shall consist of members present by designated representative or proxy.

6. Powers

The purpose of any special meeting shall be stated in the notice thereof; but at all such meetings and at annual meetings, members may consider and act upon all matters brought before them, except where otherwise provided in these By-Laws.

7. Voting Rights

Each member of the Pool shall be entitled to one vote at all meetings of the Pool. Except where otherwise provided in these By-Laws, at all meetings action may be taken only upon affirmative vote of members writing not less than 51% of the total net commercial line premiums written by all members during the latest complete calendar year in the State of New Mexico. Action may also be taken without meeting by mail or telephone upon affirmative vote of members writing not less than 51% of the total net workers compensation premiums written by all members during the latest complete calendar year in the State of New Mexico provided that all members of the Pool are polled. In the event of a tie vote, the motion fails of adoption.

8. Proxies

Members may be represented at any meeting by proxy. Members may record their votes by mail on written propositions and such votes shall have the same standing as if cast by such members in person or by proxy.

9. Minutes of Meeting

Minutes of all meetings of the Pool and of the Board of Governors shall be sent to all members.

**ARTICLE V
BOARD OF
GOVERNORS**

1. Number and Term of Office

The operation, affairs and business of the Pool shall be managed and controlled by a Board of Governors composed of seven persons, appointed by the Superintendent of Insurance, as follows:

- a. At least four members shall be knowledgeable and have experience in the field of workers' compensation insurance and be employed by or represent private, voluntary licensed insurance companies;
- b. All members shall be appointed for two-year terms; and
- c. All members shall be appointed and subject to removal by the superintendent.

2. Conditions

The Board may fix the conditions upon which assigned risks may be afforded coverage and the conditions upon which claims shall be handled by a Servicing Carrier. All risks shall be insured by a Servicing Carrier and all claims on risks shall be handled by a Servicing Carrier in accordance with such conditions.

3. Place of Meetings

All organization, regular and special meetings of the Board shall be held at a place designated by the Chair, unless in any instance some other place shall be designated by a majority of the Board.

4. Quorum and Voting Rights

A majority of the Board of Governors shall constitute a quorum. Each member of the Board shall be entitled to one vote. A member's vote may be cast only by the member, or in the member's absence, by the member's alternate. Otherwise, proxy voting shall not be permitted. In the absence of a quorum, the Board shall have no power except that a majority of the members in attendance may adjourn the meeting from time to time until a quorum shall attend. Action may also be taken without meeting by mail or telephone upon affirmative vote of a majority of the members, provided that all members of the Board are polled, and no member demands a meeting. In the event of a tie vote, the matter fails adoption.

5. Meetings

The first meeting of the Board shall be held upon a date convenient to the majority thereof, following their appointment, and thereafter the Board shall meet within thirty days next following the fourth Wednesday of June for the purpose of electing officers to serve for the next ensuing year and for the transaction of all other business within the powers of the Board. Other regular meetings of the Board of Governors shall be held at the offices of the Pool or such other location as designated by the Chair, at such dates as the Board may from time to time determine. Special meetings of the Board may be called at any time by the Chair, and shall be called by the Chair upon written request of three members of the Pool. Such notice of regular and special meetings of the Board shall be given as may be determined by the Board or, in event the period of notice shall not have been prescribed, as the Chair shall deem reasonable.

Any action which is required or permitted to be taken at a meeting of the Governors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Governors. The consent shall have the same effect as a unanimous vote. Such action shall be effective as of the date specified in the consent.

Members of the Board of Governors or any committee established by the Board may participate in a meeting by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at a Meeting.

6. Organization and Procedure

The members of the Board of Governors shall elect a Chair and Vice-Chair from among their number. The Chair, or in his absence the Vice-Chair, or in the absence of both a chair pro tem elected by the members present, shall act as chair of every meeting of the Board; and the General Manager-Secretary, or in his absence a person appointed by the Chair, shall act as Secretary of the meeting and shall keep a record of its proceedings. The order of business at all meetings of the Board shall be determined by the Chair or by a majority of the Board.

7. Disputes and Appeals

In addition to the powers elsewhere conferred upon it by these By-Laws the Board of Governors shall constitute a committee with full authority to pass upon all questions relating to the Pool including any questions as to the application, scope and effect of these By-Laws.

8. Servicing Carriers

The Board of Governors may select one or more members of the Pool to act as Servicing Carriers, subject to qualifications and such other conditions established by the Board of Governors. Contracts with and compensation of servicing carriers shall be subject to the Superintendent's approval.

9. Audit and Inspections

The Board of Governors shall have the right, in person or through representatives, at all reasonable times during the business day, to audit and inspect the books and records of any member of the Pool with respect to any obligation arising under these By-Laws.

**ARTICLE VI
OFFICERS AND
COMMITTEES**

1. Executive Officers

The executive officers of the Pool shall include a Chair, Vice-Chair, a General Manager-Secretary, a Vice President-Actuary, a Treasurer, a General Counsel and an Assistant General Counsel. All officers except the Chair may be employees of the National Council on Compensation Insurance. All executive offices shall be filled annually by the Board of Governors at its annual meeting.

2. Other Officers

The Board of Governors may elect such additional officers as in their judgment may be deemed necessary.

3. Tenure of Officers and Vacancies

All elected officers shall hold office until the next ensuing annual election of officers and until the election of their respective successors. Vacancies in elective office may be filled by a majority vote of the members of the Board of Governors then holding office.

4. Compensation and Expenses

All officers of the Pool shall serve without compensation; however, the Board of Governors may make appropriate arrangements for the performance of services by the National Council on Compensation Insurance, Inc. or any organization in furtherance of the conduct of the business activities of the Pool, and for the reimbursement to any such organization for all expenses incurred in the performance of such services, including those for the services of any of its officers or employees while serving as an officer of the Pool.

5. Chair

The Chair shall be the chief executive officer of the Pool, and shall have overall control of and responsibility for all Pool affairs, and other powers usually incidental to the office.

6. Vice-Chair

The Vice-Chair shall perform all responsibilities of the Chair in the event of his absence or inability to act.

7. General Manager-Secretary

The General Manager-Secretary shall be the executive director of and have general administrative authority for the direction of the Pool's business activities. He may certify to the By-Laws, the acts of the Board of Governors, or the members of the Pool, the tenure of, signatures, identity and acts of officers or other officials, or other official acts, and any such certificates may be relied upon by any person to whom the same shall be given, until receipt of notice to the contrary. He shall act as Secretary of all meetings of the members of the Pool and of the Board of Governors and shall record the minutes thereof, and shall cause the giving over his name, of any required notice of meetings of the members of the Pool and the Board of Governors.

8. VicePresident-Actuary

The Vice President-Actuary shall be responsible for monitoring all actuarial activities of the Pool and for the provision of actuarial input, services and guidance whenever same shall be required or requested by the Board or any of its executive officers on matters relating to Pool activities.

9. Treasurer

The Treasurer shall be responsible for the proper accounting and recording of all transactions of the Pool with its members and with others, and for the collection and disbursement of funds. The Treasurer shall also be responsible for the holding of funds and securities of the Pool which shall be kept by him in authorized banks, depositories or other places of safekeeping. He is broadly charged with maintaining adequate funding of all Pool activities.

10. General Counsel

The General Counsel shall be the chief legal officer of the Pool, charged with the responsibility of assuring the compliance of all Pool activities, and is empowered with discretion to conduct all legal matters on its behalf.

11. Assistant General Counsel

The Assistant General Counsel shall assist the General Counsel in the performance of his duties on behalf of the Pool.

12. Committees

The Board of Governors by resolution may from time to time constitute such standing or temporary committees as the Board shall determine, with duties and subject to rules not inconsistent herewith. Such committees may be composed of governors, officers, employees, agents, members or nonmembers.

13. Fidelity Insurance

Officers and employees of the Pool entrusted with the handling of Pool funds or securities shall be covered under corporate surety fidelity insurance in such form and in such amounts as the Board of Governors may in its discretion from time to time prescribe. The premiums for such insurance shall be an expense of the Pool.

ARTICLE VII FISCAL MATTERS

1. Fiscal Year

The fiscal year of the Pool shall be the calendar year unless otherwise established by the Board of Governors.

2. Deposits

Funds of the Pool shall be kept on deposit in such banks, trust companies or other depositories as may from time to time be designated and prescribed by the resolution of the Board of Governors, and such designation shall be evidenced by an instrument signed by the Chair or Vice-Chair, and countersigned by the General Manager-Secretary or the Treasurer. Funds of the Pool may also be held by servicing carriers or members in trust for the Pool. Accurate records shall be kept to identify the funds so deposited.

3. Withdrawals

Any two of the officers of the Pool duly authorized by the Board of Governors shall have the power to sign and countersign all checks, drafts or other orders for payment of money drawn by the Pool, and to cause the endorsement in the name of the Pool all commercial paper payable to it.

4. Special Accounts

Funds of the Pool also may be kept on deposit with any authorized depository, but in a special account designated as such, subject to withdrawal upon check signed by any two of the officers of the Pool duly authorized by the Board of Governors if authorized by, and subject to, the terms and conditions contained in a written instrument signed by any two of the officers of the Pool authorized by the Board of Governors. Accurate records shall be kept to identify the funds so deposited.

5. Safe Deposits

Access may be had to any safe deposit box, hired vault or like place of safekeeping standing in the name of the Pool, by the General Manager-Secretary or the Treasurer, when accompanied by the Chair or Vice-Chair.

6. Investment Income

All income on the investment of funds held by the Pool shall, upon receipt thereof, become a part of the Pool funds, and, as such, shall be subject to all the appropriate provisions hereof. The Board may establish procedures for remittance of balances due to or from a member company or servicing carrier.

**ARTICLE VIII
INDEMNIFICATION**

1. Indemnification

Any person or insurer made or threatened to be made a party to any action, suit or proceeding, because such person or insurer was a member, or a servicing carrier, or served on the Board of Governors or other committee or was an officer, employee, or agent of the Pool shall be indemnified against all judgments, fines, amounts paid in settlement, reasonable costs and expenses including attorney's fees and any other liabilities that may be incurred as a result of such action, suit or proceeding, or threatened action, suit or proceeding, except in relation to matters as to which he or it shall be adjudged in such action, suit or proceeding to be liable by reason of willful misconduct in the performance of his or its duties or obligations to the Pool and, with respect to any criminal actions or proceedings, except when such person or insurer had reasonable cause to believe that his or its conduct was unlawful. Such indemnification shall be provided whether or not such person or insurer is a member or a servicing carrier, or is holding office, or is employed at the time of such action, suit or proceeding, and whether or not any such liability is incurred prior to the adoption of this Article. Such indemnification shall not be exclusive of other rights such person or insurer may have and shall pass to the successors, heirs, executors or administrators of such person or insurer. The termination of any such civil or criminal action, suit or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such person or insurer was liable by reason of willful misconduct or that he or it had reasonable cause to believe that his or its conduct was unlawful. If any such action, suit or proceeding is compromised, it must be with the approval of the Board of Governors of the Pool; provided, however, the Board of Governors of the Pool may delegate to the General Manager-Secretary of the Pool the authority to approve any such compromise of financial liability requiring payment by the Pool which is less than an amount as may be fixed from time to time by the Board of Governors of the Pool.

2. In each instance in which a question of indemnification arises, entitlement thereto, pursuant to the conditions set forth in this Article, shall be determined by the Board of Governors which shall also determine the time and manner of payment of such indemnification; provided, however, that a person or insurer who or which has been wholly successful, on the merits or otherwise, in the defense of a civil or criminal action, suit or proceeding of the character described in Section 1 of this Article shall be entitled to indemnification as authorized in such Section. The Board of Governors of the Pool may delegate the General Manager-Secretary of the Pool the authority to determine, in a manner consistent with this Article, entitlement to indemnification and a time and manner of payment of such indemnification for any indemnification requiring payment by the Pool which is less than an amount as may be fixed from time to time by the Board of Governors of the Pool. Nothing herein shall be deemed to bind a person or insurer who or which the Board of Governors has determined not to be entitled to indemnification, or to preclude such person or insurer from asserting the right to such indemnification by legal proceedings. Such indemnification as is herein provided shall be apportioned among all members, including any named in any such action, suit or proceeding pursuant to Article XI of the By-Laws of the Pool.

**ARTICLE IX
AMENDMENTS**

1. Amendments

Any and all provisions of these By-Laws, the rules and any amendments hereto shall be subject to amendment, alteration, repeal or reenactment at any annual meeting of the Board of Governors or at any special meeting called for such purpose by the affirmative vote of two-thirds of the members. Not less than fifteen days' written notice of any such meeting shall be given, or caused to be given, by the Chair, in which notice the action proposed to be taken shall be fully set forth.

2. Effective Date

Any amendments to these By-Laws shall not be effective until approved by the Superintendent of Insurance of the State of New Mexico.

ARTICLE X EFFECTIVE DATE

These By-Laws are subject to approval by the Superintendent of Insurance of the State of New Mexico and upon such approval shall become effective as of 12:01 a.m. April 1, 1996.

ARTICLE XI RULES OF OPERATION

1. Application Processing

The Board of Governors is authorized to establish rules for the processing of applications and the assignment of applications to servicing carriers.

2. Collection and Remittance of Premiums

The servicing carrier shall undertake the collection of all premiums on all risks assigned to it.

The servicing carrier shall remit such premiums to the Pool on a schedule established by the Pool, retaining an allowance on the total written premiums on all risks as its compensation for and to cover all expenses of servicing the risk. By agreement with the Pool, servicing carriers may retain the earnings on funds held in trust for the Pool prior to their remittance to the Pool, and the Pool may retain the earnings on funds due to the servicing carrier prior to their remittance to the servicing carrier. Bureau assessments and premium taxes on all premiums collected shall be paid by the servicing carrier as part of its expenses. The aforesaid servicing carrier allowances shall not apply for premiums on retrospectively rated risks for which an equitable percentage shall be established by the Board of Governors, at such times, and in such manner as may be designated by the Board of Governors.

It is understood that to the extent possible, premiums on all assigned risks shall be payable, and shall be collected, in advance. To the extent that any part of any premium on any assigned risk shall not be collected with consequent loss to the servicing carrier of its percentage of such uncollected premium, such loss shall be borne by the servicing carrier and the Pool shall not make reimbursement therefor, provided, however, if the servicing carrier has made diligent effort to underwrite the risk and collect the premium due and has been ineffective and advance written approval is obtained in each case from the General Manager-Secretary of the Pool, then the Pool shall reimburse the servicing carrier for such uncollected premium.

The servicing carrier shall pay to the insured or producer any return premiums due, and shall be forthwith reimbursed by the Pool for the percentage of the return premium so paid which has been remitted to the Pool.

Each servicing carrier agrees that it holds funds or other assets of the Pool in trust for the Pool, and not as its own property, except for that portion of the servicing allowance which it has earned to date by actual performance of its servicing obligations. In the event of a servicing carrier's insolvency as referred to in Article III:

- a. The servicing carrier shall immediately remit to the Pool all funds and assets held in trust for the Pool;
- b. The servicing carrier shall immediately pay to the Pool all premiums, refunds, or recoveries received on Pool business after the date of insolvency, without deduction for servicing allowance;
- c. The Pool shall automatically be subrogated to the servicing carrier's right to collect premiums due or to become due on risks assigned to it;
- d. Without notice to the servicing carrier the Pool may direct all risks serviced by the servicing carrier to remit all sums due directly to the Pool or to another servicing carrier;
- e. The Pool may immediately and without notice terminate its contract with the servicing carrier, or in the discretion of the Board the Pool may make such continuing arrangements with the servicing carrier as the Board deems prudent;

f. The Pool may offset any sums due from the Pool to the servicing carrier against any sums which the carrier owes to the Pool or to insureds covered by the Pool.

In addition to its other rights against the servicing carrier the Pool shall be subrogated to the rights of insureds serviced by the carrier, who shall be deemed policyholders of the servicing carrier. Unless a higher priority is accorded by law, the Pool's claims against the servicing carrier shall be classed as a claim for accrued benefits under a policy issued by the servicing carrier.

The servicing carrier agrees that the Pool's rights and remedies in the event of insolvency shall not be delayed because of the absence of an accurate and complete accounting or estimation of liabilities. The servicing carrier agrees to remit immediately all sums claimed by the Pool subject to later accounting, estimation, and final settlement.

3. Specific Additional Allowances

If the rates promulgated for any assigned risk contain any additional allowance for service expenses, such allowance shall be retained by the servicing carrier. The Pool shall receive only its percentage of the collected premiums exclusive of such specific additional allowance.

4. Payment of Losses and Reimbursement Therefor

The servicing carrier shall pay all losses accruing on risks assigned to and accepted by it as each such loss becomes due and payable. On or before the 15th day of February of each year, each servicing carrier shall report to the Pool all claims arising and losses paid to the end of December of the prior year on account of risks assigned to and accepted by it in accordance with the provisions hereof, and thereafter at such other times as the Board of Governors may direct shall similarly report with respect to all such risks all claims arising and losses paid during the period covered by the reporting, together with the then estimated value of all claims outstanding.

Within ten days after the receipt of such report, the Pool shall reimburse each such servicing carrier for the losses paid by such servicing carrier as shown thereon. The Pool may purchase reinsurance, either on a single occurrence or aggregate coverage basis.

5. Pool Expenses and Payments

The Pool shall pay all costs and expenses of operating and maintaining the Pool, including any allowances for servicing policies reinsured by the Pool. Expenses incurred by the Pool in the administration of its affairs under these By-Laws and rules and not allocable directly to any assigned risk shall be a proper charge against, and shall be paid from, the general funds of the Pool. A record shall be kept of all such expenses, and the amount thereof shall be apportioned to the members of the Pool in the ratio of their interest in the Pool funds, and shall, when in the discretion of the Board of Governors deemed necessary, be included in any assessment levied under this Article. Except as the Board of Governors shall otherwise direct:

- a. Payments by the Pool to or in behalf of members shall be limited to the Pool's administration expense, reimbursement for losses paid under policies to which the insurance provided by the Pool applies and for return premiums on such policies, and the payment of such refunds as may be allowed under these By-Laws;
- b. And except for costs of premium collection as herein provided, the Pool shall not assume for payment, and shall not be liable to pay any expenses of any nature whatsoever incurred by members;
- c. The Pool shall reimburse members for reasonable and necessary amounts charged by others for the collection of any part of any premium on any assigned risks, provided, that advance written approval to incur such collection costs is obtained in each case from the General Manager-Secretary of the Pool. Such approval shall be given when it reasonably appears that diligent effort to collect the premium due has been made by the member in the regular course of business and has been ineffective.

6. Subrogation

In the event that a servicing carrier recovers any money by way of subrogation or otherwise, other than from the Pool, on a claim for which the servicing carrier has been reimbursed by the Pool, such servicing carrier shall reimburse the Pool for amounts paid by the Pool on account of such claim, but not more than the total amount so recovered less expenses incurred in securing such recovery.

If the servicing carrier is unsuccessful in recovering under subrogation in third-party action, the servicing carrier shall be reimbursed for subrogation expense and such expense shall be limited to legal expense of independent attorneys representing the servicing carrier in the subrogation action and the court costs related thereto.

7. Examinations and Reserves

Annually (and at such other times as the Board of Governors may direct), the Board of Governors shall make or cause to be made such review as they may deem necessary of loss payments and reserves for outstanding claims, which reserves, until the Board shall have determined upon a different reserve, shall be the estimated value of the claims reported by the servicing carrier under this Article. The Board of Governors shall have the right in its discretion to establish general reserves (such as but not limited to reserves for unearned premiums and for losses incurred but unreported) for the purpose of strengthening the Pool and for the purpose of minimizing the probability of future assessments.

8. Pool Transactions, Accounts and Financial Statements

For each year ending December 31 and thereafter at such other times as the Board of Governors may direct, the Pool shall prepare and deliver to the members a financial statement showing the condition of the Pool, which shall reflect therein the apportionment of the expense of administration provided for in this Article. Annually the Pool shall prepare a statement which shall show the condition of each account after the establishment of proper reserves as determined hereunder by the Board of Governors.

9. Assessments and Refunds

The Pool shall operate towards being self-sufficient and shall be self-sufficient no later than July 1, 1995. Effective July 1, 1995, self-sufficiency means that the rates charged the policyholders shall be set so that the amount received in premiums, together with reasonable investment income earned on those premiums, is reasonably expected to be sufficient to pay claims and losses incurred and reasonable operating expenses of the servicing carriers. This section shall not be construed to mean that member companies are relieved of their duty under 59A-33-8 to fully reinsure the policies issued by the Pool. Assessments shall be levied, or refunds allowed by the Board of Governors as they may from time to time deem reasonable and necessary. Assessments or refunds shall be for account of a specified policy year and shall be levied upon or allowed to all companies who were members during the calendar year corresponding to such policy year, and each member shall pay such proportion of such assessment and shall receive a proportionate share of such refund in proportion to the amount that the net direct commercial line premiums on the insurance written in this state during the corresponding calendar year by the issuing member bears to the total of commercial line premiums written in this state during the corresponding calendar year by all members. For policy years beginning on or after January 1, 1994, "commercial line insurer" shall apply to workers' compensation only and shall not include commercial multiple peril insurance or commercial general liability insurance.

The amount of net commercial line premiums written, which shall serve as the basis of all computations in this rule or elsewhere in the By-Laws provided for, shall be that shown by the records of the National Council on Compensation Insurance, Inc. If the amount of net commercial line premiums written for the specified calendar year is not available at the time of the levying of any assessment or the distribution of any refund, net premiums written for the preceding calendar year shall be used as the basis for a preliminary assessment or refund, but such preliminary assessment or refund shall be adjusted as soon as the net premiums written for the specified calendar year become available.

The amount of any assessment levied shall be paid within, and the amount of any refund allowed shall be distributed within such time as may be determined in their sound discretion by the Board of Governors.

As authorized by the Board of Governors each member may hold funds of the Pool in trust for the Pool, and not as its own property. By agreement with the Pool, members may retain the earnings on funds held for the Pool prior to their remittance to the Pool, and the Pool may retain the earnings on funds due to the member prior to their remittance to the servicing carrier. In the event of a member's insolvency as referred to in Article III:

- a. The member shall immediately remit to the Pool all funds and assets held in trust for the Pool;
- b. The Pool may offset any sums due to the Pool to the member against any sums which the member owes to the Pool or to insureds covered by the Pool.

In addition to its other rights against the member, the Pool shall be subrogated to the rights of insureds covered by the Pool, who shall be deemed policyholders of the member to the extent of any liability owed by the member of the Pool. Unless a higher priority is accorded by law, the Pool's claims against the member shall be classed as a claim for accrued benefits under a policy issued by the member. The member agrees that the Pool's right and remedies in the event of insolvency shall not be delayed because of the absence of any accurate and complete accounting or estimate of liabilities. The member agrees to remit immediately all sums claimed by the Pool subject to later accounting, estimation, and final settlement.

ARTICLE XII CONSTRUCTION

1. Construction

Wherever in the By-Laws there appear such phrases as "subject to the further provisions hereof" or "as herein provided" or "as limited herein," or phrases or words of like or similar import, reference is thereby intended to be made to such provisions or limitations wherever appearing in the By-Laws, and not merely to those appearing only in the section or rule in which such phrase or word is used, unless a contrary intent is expressly indicated.

The terms "net premiums written," "net commercial line insurance premiums written," "commercial line premiums written" and "commercial line insurance premiums," wherever used in these By-Laws, shall mean the gross direct premiums charged less all premiums (except dividends and savings refunded under participating policies) returned to policyholders for all commercial line insurance, exclusive of premiums for risks subject to these By-Laws, and for risks written under special national defense comprehensive rating or special national defense premium discount plans and under excess policies.

A member of the Pool referred to herein as a "servicing carrier" shall include any member company servicing coverage written by such member and reinsured by the Pool.

The term "workers compensation" and the word "workers" wherever used within these By-Laws means workers' or workmen's as applicable.

The terms "board," "commercial line insurer," "person," "policyholder," "pool," "rejected risk" and "servicing carrier" mean as they are as defined by § 59A-33-4 NMSA 1978 and Department of Insurance Regulation 33, Rule 1.

ARTICLE XIII CITATION TO SUPERINTENDENT OF INSURANCE

Failure of any member to comply with these By-Laws or to pay any assessment levied against such member within thirty (30) days of notice thereof shall be grounds for the citation of such member to the Superintendent of Insurance of New Mexico by the Board.

ARTICLE XIV APPEALS

Any person aggrieved by any ruling, order, decision, action, or failure to act by the Pool or its agents shall follow the procedures established by Articles V and XI. When such procedures and remedies have been exhausted, the person may file a written appeal of a ruling or decision to the Superintendent of Insurance, or otherwise as provided by law, within 30 days following the ruling or decision.

ARTICLE XV TERMINATION OF POOL

If any law is hereafter enacted which permits the termination of the Pool, then it may be terminated upon the affirmative vote of two-thirds of the members. Upon termination of the Pool, distribution of any refund or allocation of any assessment, to the members entitled to participate herein, shall be made within such reasonable period of time as the Board shall determine; and all provisions of these By-Laws relative to administration of the Pool shall remain in full force and effect until such final refund or assessment shall have been made.

Distribution of any refund or apportionment of any assessment in the event of termination of the Pool shall be made to each member in the same manner as is provided for the distribution of any refund or the apportionment of any assessment in Article XI.

ARTICLE XVI
EFFECT OF BY-LAWS UPON MEMBERS

Upon adoption and approval of these By-Laws they shall be binding upon all members of the Pool.