

TITLE 13 INSURANCE
CHAPTER 2 INSURANCE COMPANY LICENSING AND OPERATION
PART 9 PROPERTY AND CASUALTY ACTUARIAL OPINIONS

13.2.9.1 ISSUING AGENCY: New Mexico Office of Superintendent of Insurance (“OSI”).
[13.2.9.1 NMAC - N, 07/30/2010, A, 7/1/2022]

13.2.9.2 SCOPE: This rule applies to property and casualty insurance companies conducting business in New Mexico.
[13.2.9.2 NMAC - N, 07/30/2010]

13.2.9.3 STATUTORY AUTHORITY: Sections 59A-2-9 and 59A-5-29 NMSA 1978.
[13.2.9.3 NMAC - N, 07/30/2010]

13.2.9.4 DURATION: Permanent.
[13.2.9.4 NMAC - N, 07/30/2010]

13.2.9.5 EFFECTIVE DATE: July 30, 2010 unless a later date is cited at the end of a section.
[13.2.9.5 NMAC - N, 07/30/2010]

13.2.9.6 OBJECTIVE: The purpose of this rule is to require the annual filing of a statement of actuarial opinion by the appointed actuary of each property and casualty insurance company doing business in New Mexico, and the annual filing of an actuarial opinion summary by the appointed actuary of each property and casualty insurance company domiciled in New Mexico.
[13.2.9.6 NMAC - N, 07/30/2010]

13.2.9.7 DEFINITIONS: For the purpose of this rule:

A. “actuarial board for counseling and discipline” means the board established by the American academy of actuaries and related U.S. actuarial organizations to strengthen their members’ adherence to recognized standards of ethical and professional conduct;

B. “actuarial opinion” means the opinion of an appointed actuary regarding the adequacy of the reserves in accordance with applicable actuarial standards of practice;

C. “actuarial report” means a document or other presentation, prepared as a formal means of conveying the actuary’s professional conclusions and recommendations, of recording and communicating the methods and procedures, of assuring that the parties addressed are aware of the significance of the actuary’s opinion or findings and that documents the analysis underlying the opinion;

D. “annual statement” means that statement required by Section 59A-5-29 NMSA 1978 to be filed by the company with the office of the superintendent annually;

E. “appointed actuary” means a qualified actuary who was appointed by the company’s board of directors, or its equivalent, or by a committee of the board, by December 31 of the calendar year for which the opinion is rendered;

F. “company” means an insurer authorized to write property or casualty insurance under the laws of any state and who files on the property and casualty blank;

G. “qualified actuary” means a person who meets the basic education, experience and continuing education requirements of the Specific Qualification Standards promulgated by the American academy of actuaries, has obtained and maintains an accepted actuarial designation specified by the National Association of Insurance Commissioners Annual Statement Instructions, and is a member of a professional actuarial association that requires adherence to the same Code of Professional Conduct and U.S. Qualification Standards promulgated by the American academy of actuaries, and participates in the actuarial board for counseling and discipline when its association members are practicing in the U.S.; or a member in good standing of the American academy of actuaries who has been approved as qualified for signing casualty loss reserve opinions by the casualty practice council of the American academy of actuaries.

[13.2.9.7 NMAC - N, 07/30/2010, A, 7/1/2022]

13.2.9.8 ACTUARIAL OPINION OF RESERVES AND SUPPORTING DOCUMENTATION:

A. Statement of actuarial opinion. Every property and casualty insurance company doing business in New Mexico, unless otherwise exempted by the superintendent, shall annually submit the opinion of an appointed actuary entitled "statement of actuarial opinion." This opinion shall be filed in accordance with the appropriate national association of insurance commissioners property and casualty annual statement instructions. The request for exemption from this requirement must be made in writing to the New Mexico superintendent before December 31st of each calendar year.

B. Actuarial opinion summary.

(1) Every property and casualty insurance company domiciled in New Mexico that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary, written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with the appropriate national association of insurance commissioners property and casualty annual statement instructions and shall be considered as a document supporting the actuarial opinion required in Subsection A of this section.

(2) A company licensed but not domiciled in New Mexico shall provide the actuarial opinion summary upon request.

C. Actuarial report and workpapers.

(1) An actuarial report and underlying workpapers as required by the appropriate national association of insurance commissioners property and casualty annual statement instructions shall be prepared to support each actuarial opinion.

(2) If the insurance company fails to provide a supporting actuarial report or workpapers at the request of the superintendent or the superintendent determines that the supporting actuarial report or workpapers provided by the insurance company is otherwise unacceptable to the superintendent, the superintendent may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting actuarial report or workpapers.

D. The appointed actuary shall not be liable for damages to any person (other than the insurance company and the superintendent) for any act, error, omission, decision or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary.

[13.2.9.8 NMAC - N, 07/30/2010; A, 11/15/2012]

13.2.9.9 CONFIDENTIALITY:

A. The statement of actuarial opinion shall be provided with the annual statement in accordance with the appropriate national association of insurance commissioners property and casualty annual statement instructions and shall be treated as a public document.

B. Documents, materials and other information.

(1) Documents, materials or other information in the possession or control of the insurance division that are considered an actuarial report, workpapers or actuarial opinion summary provided in support of the opinion, and any other material provided by the company to the superintendent in connection with the actuarial report, workpapers or actuarial opinion summary, shall be confidential by law and privileged, shall not be a public record, shall not be subject to inspection, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(2) This provision shall not be construed to limit the superintendent's authority to release the documents to the American academy of actuaries' actuarial board for counseling and discipline so long as the material is required for the purpose of professional disciplinary proceedings and that the actuarial board for counseling and discipline establishes procedures satisfactory to the superintendent for preserving the confidentiality of the documents, nor shall this section be construed to limit the superintendent's authority to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the superintendent's official duties.

C. Neither the superintendent nor any person who received documents, materials or other information while acting under the authority of the superintendent shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to Subsection B of this section.

D. In order to assist in the performance of the superintendent's duties, the superintendent:

(1) may share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection B of this section with other state, federal and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information and has the legal authority to maintain confidentiality; and

(2) may receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the national association of insurance commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

E. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the superintendent under this section or as a result of sharing as authorized in Subsection D of this section.

[13.2.9.9 NMAC - N, 07/30/2010]

HISTORY OF 13.2.9 NMAC: [RESERVED]