

**TITLE 13 INSURANCE**  
**CHAPTER 2 INSURANCE COMPANY LICENSING AND OPERATION**  
**PART 11 RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT**

**13.2.11.1 ISSUING AGENCY:** New Mexico Office of Superintendent of Insurance.  
[13.2.11.1 NMAC - N, 08/01/2021]

**13.2.11.2 SCOPE:** This rule applies to all insurers domiciled in New Mexico unless exempt pursuant to Subsection 11 of this rule.  
[13.2.11.2 NMAC - N, 08/01/2021]

**13.2.11.3 STATUTORY AUTHORITY:** Authority for this rule derives from the superintendent's powers under Section 59A-1-18 NMSA 1978, Section 59A-2-9 NMSA 1978, Section 59A-2-12 NMSA 1978, Chapter 59A Article 4 NMSA 1978, "Examinations, Hearings and Appeals," Chapter 59A Article 5A NMSA 1978, the "Risk Based Capital Act," and Chapter 57 Article 3A NMSA 1978, the "Uniform Trade Secrets Act."  
[13.2.11.3 NMAC - N, 08/01/2021]

**13.2.11.4 DURATION:** Permanent.  
[13.2.11.4 NMAC - N, 08/01/2021]

**13.2.11.5 EFFECTIVE DATE:** August 1, 2021, unless a later date is cited at the end of a section.  
[13.2.11.5 NMAC - N, 08/01/2021]

**13.2.11.6 OBJECTIVE:** The purpose of this rule is to provide the requirements for maintaining a risk management framework and completing an own risk and solvency assessment and to provide guidance and instruction for filing an own risk and solvency assessment with the superintendent.  
[13.2.11.6 NMAC - N, 08/01/2021]

**13.2.11.7 DEFINITIONS:** The following terms have the meaning given, unless the context otherwise requires. Other terms used in this rule have the meanings given in Chapter 59A Article 4 NMSA 1978.

**A. "Guidance manual"** means the current version of the own risk and solvency assessment guidance manual developed and adopted by the NAIC and as amended from time to time; provided that a change in the guidance manual shall be effective on the January 1 following the calendar year in which the changes have been adopted by the NAIC;

**B. "insurance group"** means those insurers and affiliates included within an insurance holding company system as defined in Subparagraph F of Section 59A-37-2NMSA 1978;

**C. "insurer"** has the same meaning as set forth in Subparagraph G of Section 59A-37-2 NMSA 1978;

**D. "NAIC"** means the national association of insurance commissioners;

**E. "own risk and solvency assessment"** means a confidential internal assessment, appropriate to the nature, scale and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer's or insurance group's current business plan and the sufficiency of capital resources to support those risks;

**F. "summary report"** means a confidential high-level summary of an insurer's or insurance group's own risk and solvency assessment; and

**G. "superintendent"** means the superintendent of the New Mexico office of superintendent of insurance.

[13.2.11.7 NMAC - N, 08/01/2021]

**13.2.11.8 RISK MANAGEMENT FRAMEWORK:** An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing and reporting on its material and relevant risks. This requirement may be satisfied if the insurance group of which an insurer is a member maintains a risk management framework applicable to the operations of the insurer.

[13.2.11.8 NMAC - N, 08/01/2021]

**13.2.11.9 REQUIREMENT FOR OWN RISK AND SOLVENCY ASSESSMENT:** Except as provided pursuant to Section 11 of this rule, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an own risk and solvency assessment consistent with a process comparable to the guidance manual. The own risk and solvency assessment shall be conducted no less than annually but also at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

[13.2.11.9 NMAC - N, 08/01/2021]

**13.2.11.10 OWN RISK AND SOLVENCY ASSESSMENT SUMMARY REPORT:**

**A.** Upon the superintendent's request, an insurer shall submit to the superintendent an own risk and solvency assessment summary report or any combination of reports that together contain the information described in the guidance manual applicable to the insurer and the insurance group, if any, of which it is a member. The summary report, if requested, shall be due thirty days after the completion of the insurer's most recent own risk and solvency assessment that has been performed in accordance with the insurer's or the insurance group's internal strategic planning process. Upon the superintendent's request, the insurer shall advise the superintendent of the date, annual or otherwise, that the insurer or the insurance group conducts its internal strategic planning process. If the insurer is a member of an insurance group, the insurer shall submit the summary report or summary reports required by this subsection if the superintendent is the lead state commissioner of the insurance group as determined by the procedures within the financial analysis handbook adopted by the NAIC.

**B.** Each summary report shall include a signature of the insurer's or insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process attesting, to the best of the signatory's belief and knowledge, that the insurer applies the enterprise risk management process described in the summary report and that a copy of the summary report has been provided to the insurer's board of directors or the appropriate committee thereof.

**C.** An insurer may comply with the provisions of Subsection A of this section by providing the most recent and substantially similar summary report or summary reports provided by the insurer or another member of the insurance group of which the insurer is a member to the commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the guidance manual. Any such report in a language other than English shall be accompanied by a translation of that report into the English language.

[13.2.11.10 NMAC - N, 08/01/2021]

**13.2.11.11 EXEMPTION:**

**A.** An insurer shall be exempt from the provisions of this rule if:

(1) the insurer has an annual direct written and unaffiliated assumed premium, including international direct and assumed premiums but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, of less than five hundred million dollars (\$500,000,000); and

(2) the insurance group of which the insurer is a member has an annual direct written and unaffiliated assumed premium, including international direct and assumed premiums but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, of less than one billion dollars (\$1,000,000,000).

**B.** If an insurer qualifies for exemption pursuant to Paragraph (1) of Subsection A of this section, but the insurance group of which it is a member does not qualify for exemption pursuant to Paragraph (2) of Subsection A of this section, the summary report that may be required pursuant to Section 10 of this rule shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one summary report for any combination of insurers; provided that any combination of reports includes every insurer within the insurance group.

**C.** If an insurer does not qualify for exemption pursuant to the provisions of Paragraph (1) of Subsection A. of this section, but the insurance group of which it is a member qualifies for exemption pursuant to Paragraph (2) of Subsection A of this section, the only summary report that may be required pursuant to Section 10 of this rule shall be the report applicable to that insurer.

**D.** An insurer that does not qualify for exemption pursuant to Subsection A of this section may apply to the superintendent for a waiver from the requirements of this rule based upon unique circumstances. In deciding whether to grant an insurer's request for waiver, the superintendent may consider the type and volume of business written, ownership and organizational structure and any other factor the superintendent considers relevant to the insurer or insurance group of which it is a member. If an insurer is part of an insurance group with insurers

domiciled in more than one state, the superintendent will coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

**E.** Notwithstanding the exemptions stated in this section:

(1) the superintendent may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment and file a summary report based on unique circumstances, including the type and volume of business written, ownership and organizational structure, federal agency requests and international supervisor requests; and

(2) the superintendent may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment and file a summary report if the insurer has risk-based capital for a company action level event pursuant to the Risk Based Capital Act or otherwise exhibits qualities of a troubled insurer as determined by the superintendent.

**F.** If an insurer that qualifies for an exemption pursuant to Subsection A of this section subsequently no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which it is a member, the insurer shall have one year following the year the threshold is exceeded to comply with the requirements of this rule.

[13.2.11.11 NMAC - N, 08/01/2021]

### **13.2.11.12 CONTENTS OF OWN RISK AND SOLVENCY ASSESSMENT SUMMARY REPORTS:**

**A.** A summary report shall be prepared consistent with the guidance manual, subject to the requirements of Subsection B of this section. Documentation and supporting information shall be maintained and made available upon examination or upon request of the superintendent.

**B.** The review of the summary report, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multistate or global insurers and insurance groups.

[13.2.11.12 NMAC - N, 08/01/2021]

### **13.2.11.13 CONFIDENTIALITY:**

**A.** Documents, materials or other information, including the summary report, in the possession or control of the office of superintendent of insurance that are obtained by, created by or disclosed to the superintendent or any other person pursuant to this rule contain confidential and sensitive information related to an insurer or insurance group's identification of risks material and relevant to the insurer or insurance group filing the report. This information includes proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. Any such documents, materials or other information, including the summary report, shall be treated as confidential trade secrets under the Uniform Trade Secrets Act, and as authorized by Subsection B of Section 59A-2-12 NMSA 1978, are deemed confidential by the superintendent as specifically defined by Subsection D of Section 57-3A-2 NMSA 1978.

**B.** The documents, materials or other information, including the summary report, submitted pursuant to this rule, shall remain confidential as long as the documents, materials or other information, including the summary report are in the possession or control of the superintendent. The superintendent may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the superintendent's official duties. The superintendent may not otherwise make the documents, materials or other information public without prior written notice to the insurer.

**C.** In order to assist in the performance of the superintendent's regulatory duties, the superintendent:

(1) may, upon request, share documents, materials or other information related to an own risk and solvency assessment, including the confidential documents, materials or information subject to Subsection A of this section and including proprietary and trade-secret documents and materials, with other state, federal and international financial regulatory agencies, with the NAIC, and with any third-party consultants designated by the superintendent; provided that the recipient agrees in writing to maintain the confidential status of the documents, materials or other information related to an own risk and solvency assessment and has verified in writing the legal authority to maintain confidentiality;

(2) may receive documents, materials or other information related to an own risk and solvency assessment, including confidential documents, materials or information and including proprietary and trade-secret information or documents, from regulatory officials of other foreign or domestic jurisdictions and from the national association of insurance commissioners, and shall maintain as confidential any documents, materials or

information received with notice or the understanding that it is confidential under the laws of the jurisdiction that is the source of the document, material or information; and

(3) shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to this rule consistent with this subsection that shall:

(a) specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners or a third-party consultant pursuant to this rule, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidential status of the documents, materials or other information related to an own risk and solvency assessment and has verified in writing the legal authority to maintain confidentiality;

(b) specify that ownership of information shared with the NAIC or a third-party consultant pursuant to this rule remains with the insurer and that the NAIC's or a third-party consultant's use of the information is subject to the direction of the superintendent;

(c) prohibit the NAIC or third-party consultant from storing the information shared pursuant to this rule in a permanent database after the underlying analysis is completed;

(d) require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this rule when subject to a request or subpoena;

(e) require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer that has been shared with the NAIC or a third-party consultant pursuant to this rule; and

(f) in the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

**D.** The sharing of information and documents by the superintendent pursuant to this rule shall not constitute a delegation of regulatory authority or rulemaking, and the superintendent is solely responsible for the administration, execution and enforcement of the provisions of this rule.

**E.** No waiver of any applicable privilege or claim of confidentiality of documents, proprietary and trade-secret materials or other information related to an own risk and solvency assessment shall occur as a result of disclosure of that related information, materials or documents to the superintendent under this section or as a result of sharing as described in this rule.

[13.2.11.13 NMAC - N, 08/01/2021]

**13.2.11.14 SANCTIONS:** Any insurer failing, without just cause, to timely file the summary report as required in this rule shall be required, after notice and hearing, to pay a penalty of one thousand dollars (\$1,000) for each day's delay to be recovered by the superintendent, and the penalty so recovered shall be paid into the general fund of the state of New Mexico. The maximum penalty under this section is one hundred thousand dollars (\$100,000). The superintendent may reduce the penalty if the insurer demonstrates to the superintendent that the imposition of the penalty would constitute a financial hardship to the insurer.

[13.2.11.14 NMAC - N, 08/01/2021]

**History of 13.2.11 NMAC: [RESERVED]**