

TITLE 13 INSURANCE
CHAPTER 7 INSURANCE TRADE PRACTICES AND FRAUDS
PART 4 CATASTROPHIC CLAIMS

13.7.4.1 ISSUING AGENCY: New Mexico Office of Superintendent of Insurance (“OSI”).
[13.7.4.1 NMAC – Rp, 13.7.4.1 NMAC, 3/1/2023]

13.7.4.2 SCOPE: This rule applies to catastrophic claims settlement practices of insurers and other persons subject to Section 59A-16-20 NMSA 1978.
[13.7.4.2 NMAC – Rp, 13.7.4.2 NMAC, 3/1/2023]

13.7.4.3 STATUTORY AUTHORITY: Sections 59A-2-9, 59A-16-20 and 59A-16-20.1 NMSA 1978.
[13.7.4.3 NMAC – Rp, 13.7.4.3 NMAC, 3/1/2023]

13.7.4.4 DURATION: Permanent.
[13.7.4.4 NMAC - Rp, 13.7.4.4 NMAC, 3/1/2023]

13.7.4.5 EFFECTIVE DATE: March 1, 2023, unless a later date is cited at the end of a section.
[13.7.4.5 NMAC - Rp, 13.7.4.5 NMAC, 3/1/2023]

13.7.4.6 OBJECTIVE: This rule establishes definitions and procedures for implementing Subsection F of Section 59A-16-20 NMSA 1978 requiring all catastrophic claims to be settled within a 90-day period after the assignment of a catastrophic claim number when a catastrophic loss has been declared and subjecting insurers who fail to settle catastrophic claims within this time period to the enforcement and penalty provisions of the Insurance Code, specifically those pertaining to the Unfair Claims Practices Act.
[13.7.4.6 NMAC - Rp, 13.7.4.6 NMAC, 3/1/2023]

13.7.4.7 DEFINITIONS:

A. “Catastrophe” means a disaster, natural disaster or accident or series of disasters, natural disasters or accidents arising out of a single event that results in the submittal of claims against insurers by at least three percent of the population of the geographic area directly impacted by the event, results in:

(1) the submittal of claims against insurers by at least three percent of the population of the geographic area directly impacted by the event, results in total insured losses in New Mexico of more than \$2,500,000 and takes place within a period of seven consecutive days; or

(2) the declaration of an emergency by the Governor of New Mexico under the governor’s statutory powers including, but not necessarily limited to, those enumerated under the All Hazard Emergency Management Act or the Public Health Emergency Response Act, followed by the Superintendent’s independent determination that a catastrophe has occurred.

B. “Catastrophic claim” means a property insurance claim or a vehicle physical damage insurance claim directly resulting from a catastrophe. A catastrophic claim does not include a claim for injury or death to a human, liability for loss or damage to another, loss of use of property or a vehicle, loss of earnings or other loss or damage consequential to a catastrophe.

C. “Catastrophic claim number” means a unique numerical designation assigned to a given catastrophe for the purpose of referencing information relating to the catastrophe. A catastrophic claim number may be a combination of numerals and letters.

D. “Catastrophic claims bureau” means:

(1) a group of agency staff designated by the superintendent at the time of the catastrophe to gather information relating to catastrophic claims, to recommend the declaration of catastrophes, and to recommend assignment of catastrophic claim numbers;

(2) an independent organization appointed by the superintendent to gather information relating to catastrophic claims, to recommend the declaration of catastrophes, and to recommend assignment of catastrophic claim numbers; or

(3) a combination of the arrangements described in Paragraphs (1) and (2) of this subsection.

E. “Claims settlement” means an agreement between an insurer and claimant as to the amount of money owed to the claimant on a particular claim.

F. “Disaster” means a fire, flood, explosion, or technological accident that causes severe property

damage or loss.

G. “Geographic area” means the area adversely affecting a significant portion of the population within the catastrophe region identified as a town, city, county or region or combination thereof as determined by the superintendent.

H. “Natural disaster” means a natural event, including a tornado, storm, high water, wind-driven water, earthquake, volcanic eruption, landslide, mudslide, snowstorm, wildfire or drought, that causes severe damage or loss to property located in New Mexico.

I. “Payment” means loss payment, excluding adjustment expenses and net of actual salvage and subrogation recoveries. For an applicable line of business, payment shall include losses associated with loss of use, additional living expense, fair rental value, and other losses pertinent to that line of business.

J. “Post-declaration claim” means a catastrophic claim reported to an insurer after a catastrophe has been declared.

K. “Potentially qualifying event” means a disaster, natural disaster or accident or series of disasters, natural disasters or accidents that the superintendent, a catastrophic claims bureau or an insurer reasonably anticipates could result in a catastrophe declaration.

[13.7.4.7 NMAC - Rp, 13.7.4.7 NMAC, 3/1/2023]

13.7.4.8 CATASTROPHIC CLAIMS BUREAU: The superintendent will designate a catastrophic claims bureau to make recommendations to the superintendent concerning the declaration of a catastrophe and assignment of a catastrophic claim number. The superintendent may choose to make such designation using any of the arrangements described in Subsection D of Section 7 of this rule. The superintendent may require an insurer to report information concerning each catastrophic claim to the catastrophic claims bureau.

[13.7.4.8 NMAC - N, 3/1/2023]

13.7.4.9 PRE-DECLARATION INSURER REPORTING REQUIREMENTS: Upon the existence of a potentially qualifying event, the superintendent will issue a bulletin describing data required to be submitted by insurers. An insurer shall report the information described in the bulletin to the catastrophic claims bureau within seven days of the issuance of the bulletin. If an insurer reasonably believes additional information will aid the superintendent in deciding whether to declare a catastrophe, the insurer shall also submit that information. Nothing in this rule diminishes the superintendent’s authority to require additional reporting.

[13.7.4.9 NMAC - N, 3/1/2023]

13.7.4.10 DECLARATION OF CATASTROPHE: Upon the occurrence of an event that reasonably appears to be a catastrophe, and after receipt of the pre-declaration insurer reports required pursuant to Section 9 of this rule, the superintendent will consult with the catastrophic claims bureau as soon as practicable and will decide whether or not to declare a catastrophic loss. If the superintendent declares a catastrophic loss, then the superintendent will immediately assign a catastrophic claim number to that loss.

[13.7.4.10 NMAC - N, 3/1/2023]

13.7.4.11 CATASTROPHIC CLAIMS SETTLEMENT PRACTICES:

A. An insurer shall settle each catastrophic claim within a 90-day period after the superintendent has declared a catastrophic loss and has assigned a catastrophic claim number.

B. If the governor has declared an emergency, then the event giving rise to the governor’s emergency declaration may, at the superintendent’s discretion, be treated as a catastrophe consistent with the provisions of Section 10 of this rule, without the need for the pre-declaration insurer reports. Under such circumstances, an insurer shall settle each catastrophic claim within a 90-day period after the superintendent has exercised this discretion and declared a catastrophe. However, nothing in this rule shall be construed to reduce any of the superintendent’s powers or alter any of the superintendent’s duties as provided by Section 59A- 2-7 NMSA 1978, the All Hazard Emergency Management Act, the Public Health Emergency Response Act or any rule implementing those laws.

[13.7.4.11 NMAC – Rp, 13.7.4.8 NMAC, 3/1/2023]

13.7.4.12 EXCEPTION FOR POST-DECLARATION CLAIMS: If a claim is a post-declaration claim, an insurer shall settle such post-declaration claim within a 90-day period after such claim is reported to the insurer.

[13.7.4.12 NMAC - N, 3/1/2023]

13.7.4.13 TOLLING: An insurer may toll the 90-day period described in Section 10, 11, or 12 of this Rule by one of the following mechanisms:

A. If, prior to the expiration of the 90-day period described in Section 10, 11, or 12 of this Rule, whichever is applicable, an insurer presents sufficient evidence to the superintendent to demonstrate a reasonable belief or probable cause that one or more claims subject to this Rule was fraudulent, the applicable 90 day period shall be tolled during the pendency of the investigation into such fraud. However, if the superintendent determines that the evidence is insufficient, the 90 day time period shall not be tolled, and, if this determination is made after the expiration of the 90-day period, the insurer will be deemed to be in violation of this Rule.

B. If, prior to the expiration of the 90-day period described in Section 10, 11, or 12 of this Rule, whichever is applicable, an insurer demonstrates to the superintendent that a claimant has not submitted all required documentation for the claim, the applicable 90-day period shall be tolled until the claimant produces sufficient documentation.

[13.7.4.13 NMAC - N, 3/1/2023]

HISTORY OF 13.7.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SCC 93-2 IN, Catastrophic Claims (Regulation 16, Rule 1), filed 8/6/1993.

History of Repealed Material:

13.7.4 NMAC – Catastrophic Claims, recompiled 11/30/2001 from the original (Regulation 16, Rule 1), filed 8/6/1993, was repealed and replaced by 13.7.4 NMAC – Catastrophic Claims, effective 3/1/2023.