

This rule was filed as 13 NMAC 19.2.

**TITLE 13 INSURANCE**  
**CHAPTER 19 NON-ADMITTED OR SURPLUS LINE INSURANCE**  
**PART 2 WRITING SURPLUS LINE BUSINESS**

**13.19.2.1 ISSUING AGENCY:** New Mexico State Corporation Commission [Public Regulation Commission], Department of Insurance, Post Office Box 1269, Santa Fe, NM 87504-1269.  
[1/1/99; Recompiled 11/30/01]

**13.19.2.2 SCOPE:** This rule applies to the transaction of surplus lines insurance business within the state.  
[1/1/99; Recompiled 11/30/01]

**13.19.2.3 STATUTORY AUTHORITY:** Sections 59A-2-9 NMSA 1978.  
[1/1/99; Recompiled 11/30/01]

**13.19.2.4 DURATION:** Permanent.  
[1/1/99; Recompiled 11/30/01]

**13.19.2.5 EFFECTIVE DATE:** January 1, 1999, unless a later date is cited at the end of a section or paragraph.  
[1/1/99; Recompiled 11/30/01]  
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

**13.19.2.6 OBJECTIVE:** The purpose of this rule is to implement Chapter 59A, Article 14 NMSA 1978 Surplus Line Insurance.  
[1/1/99; Recompiled 11/30/01]

**13.19.2.7 DEFINITIONS:** In addition to the definitions in Section 59A-14-2 NMSA 1978, the following definitions apply in this rule:

- A. "Alien insurer" has the meaning given in Section 59A-5-2 NMSA 1978.
- B. "Foreign insurer" means an insurer organized under the laws of a state other than New Mexico.
- C. "IRIS" means the insurance regulatory information system of the national association of insurance commissioners.
- D. "Type of insurance" has the meaning given in Section 59A-14-2F NMSA 1978.

[1/1/99; Recompiled 11/30/01]

**13.19.2.8 EXPORT ON BASIS OF RATE PROHIBITED:** The possibility or actuality that insurance may be obtained at a lower cost from an unauthorized insurer is not sufficient rationale for the transaction of surplus lines insurance if an authorized insurer is willing to provide the insurance.  
[1/1/99; Recompiled 11/30/01]

**13.19.2.9 PROHIBITION ON ARTIFICIAL DIVISION OF COVERAGE:**

- A. Artificial divisions of coverage in one class or any form of coverage under one class into two or more proposed contracts for the purpose of obtaining a marketing or rate advantage upon the entire risk is prohibited where the entire coverage sought in that class or form would be acceptable as a single contract to an authorized insurer.
- B. Combinations of primary coverage and excess coverage shall not be considered a violation of this section if the excess insurance is written by an eligible surplus lines insurer:
  - (1) because of a refusal in writing by the primary authorized insurer to assume the limits of liability desired by the person seeking insurance; or
  - (2) on a written demand, including specific reasons, by the person seeking insurance that the entire liability not be placed with one insurance company.

[1/1/99; Recompiled 11/30/01]

**13.19.2.10 INVESTIGATION OF FINANCIAL CONDITION OF INSURER:**

A. Prior to placing insurance with an eligible surplus lines insurer, the surplus lines broker must ascertain that the insurer is in sound financial condition. To fulfill this requirement, the surplus lines broker must:

(1) determine that the insurer is on the most recent list of eligible surplus lines insurers maintained by the superintendent; and

(2) make inquiry sufficient to satisfy the surplus lines broker that the insurer is well managed, possesses financial capacity adequate to its business, and has a good reputation in the community.

B. Whenever it comes to the attention of the surplus lines broker that there is any reasonable basis for doubt as to 13 NMAC 19.2.10.1 [now Subsection A of 13.19.2.10 NMAC] for a particular insurer, the surplus lines broker shall not place any further business with such insurer and shall promptly notify the superintendent.

[1/1/99; Recompiled 11/30/01]

**13.19.2.11 NONRESIDENT SURPLUS LINES BROKERS:** A licensed nonresident agent or broker may also be licensed as a surplus lines broker in order to place exportable surplus lines coverage with a risk retention group or on behalf of a risk purchasing group. A nonresident surplus line broker shall be subject to the requirements of Section 59A-14-10 NMSA 1978.

[1/1/99; Recompiled 11/30/01]

**13.19.2.12 APPLICATION PROCESS FOR SURPLUS LINES INSURER:**

A. An alien insurer listed on the national association of insurance commissioners' international insurer's department quarterly listing of alien insurers will be deemed to have met the requirements of this section.

B. To apply for qualification as an eligible surplus lines insurer, an unauthorized foreign insurer shall file with the superintendent the information required in Section 59A-14-4 NMSA 1978. In support of the application, the insurer shall file the following items, using forms prescribed and provided by the superintendent where available:

(1) a letter requesting approval as an eligible surplus lines insurer;

(2) a certified copy of the insurer's articles of incorporation, bearing the seal of the state official having custody of the original;

(3) a copy of the insurer's bylaws, certified by its corporate secretary, with its corporate seal affixed to the document;

(4) a properly executed power of attorney authorizing the superintendent to accept service of process on behalf of the insurer;

(5) a copy of the latest annual statement of the insurer, certified by the state of domicile;

(6) a document indicating compliance by the insurer with the laws of its home state as to the kind or kinds of insurance which the insurer is authorized to transact in its state of domicile, certified by the state of domicile;

(7) a document indicating the amount and description of the securities deposited with the insurer's home state or any other state for the benefit of all its policyholders and/or creditors, certified by the state of domicile;

(8) a report of examination from the insurer's home state;

(9) a copy of the insurer's last quarterly statement;

(10) conflict of interest forms;

(11) a list of the insurer's officers, directors and key personnel and a biographical affidavit for each;

(12) a list and description of the insurer's reinsurance contracts;

(13) a statement of the insurer's plan of operation in this state;

(14) an A.M. Best's gallery report of the insurer;

(15) an IRIS report of the insurer;

(16) a copy of the latest audit report of the insurer, in no case older than one year, certified by the individual or company undertaking the audit;

(17) an actuarial certification of the insurer;

(18) a statement as to whether the insurer has written any business in the past or present for any risks located in New Mexico, with complete details if the answer is affirmative;

(19) a copy of the declaration page of the fidelity bond;

(20) a surplus lines insurer contact processing form prescribed by the superintendent; and

(21) any other information the superintendent may require.

C. In all submissions to the superintendent, all information requested shall be provided and all questions shall be answered. Failure to answer all of the questions, to provide all of the information, or to respond to an inquiry by the superintendent shall result in an automatic disqualification of the applicant until such time as this requirement is satisfied fully. The superintendent may require information to be furnished under oath in accordance with Section 59A-4-3 NMSA 1978.

D. Upon approval of an application for surplus lines insurer eligibility, the superintendent may require the insurer to make a special deposit in accordance with Section 59A-5-19 NMSA 1978.  
[1/1/99; Recompiled 11/30/01]

**13.19.2.13 EXCEPTION TO ELIGIBILITY REQUIREMENTS FOR SURPLUS LINES INSURERS:**

For good cause shown, the superintendent may waive in writing the eligibility requirements of Section 59A-14-4 NMSA 1978 to permit insurance to be placed as to a particular risk and insurer if the insurance is not otherwise reasonably obtainable from an authorized insurer or eligible surplus lines insurer. The superintendent may consider the following factors in determining good cause for this waiver:

A. the financial integrity, quality of management, record and reputation of the unauthorized insurer, including its management experience, A.M. Best's rating, IRIS reports, rate of growth, loss ratios, reserves, general financial condition, the length of time the insurer has been authorized in its state of domicile, the results of any previous regulatory action, and other related factors that the superintendent may determine are useful in making this assessment;

B. the capital and surplus of the unauthorized insurer's parent company, including the financial solidity of the parent company and the commitment by the parent company to support the unauthorized insurer through reinsurance;

C. the profitability of the unauthorized insurer, including its net income, stability and consistency;  
and

D. the interests of the public and policyholders.

[1/1/99; Recompiled 11/30/01]

**13.19.2.14 REFUSAL OR WITHDRAWAL OF SURPLUS LINES INSURER ELIGIBILITY:** The superintendent may refuse to initially list or continue to list an unauthorized insurer on the superintendent's list of eligible surplus lines insurers for any one of the following reasons:

A. the insurer's key management, owners or other employees have been involved in fraud, mismanagement, bankruptcy or other activities that reflect unfavorably on the integrity of the insurer;

B. the insurer operates through managing general agents without appropriate safeguards;

C. the insurer has a material conflict of interest;

D. the insurer has been in business for less than three years;

E. the insurer has had new owners or management for less than three years;

F. the insurer has an a.m. best's rating of B or lower;

G. the insurer has had three or more adverse IRIS reports, unless the superintendent accepts a valid explanation by the insurer;

H. the insurer has had a rate of growth greater than 20% per year over the last three years, unless other financial indicators are favorable;

I. the insurer has been unprofitable for each of the last three years or has a long-term history of chronic unprofitability, unless the superintendent accepts a valid explanation by the insurer;

J. the insurer has a questionable financial condition for any other reason;

K. the superintendent has reason to believe that the insurer meets the ineligibility standards of Section 59A-14-14.1 NMSA 1978; or

L. the superintendent determines that such action is necessary for protection of the public.

[1/1/99; Recompiled 11/30/01]

**13.19.2.15 APPEAL OF SUPERINTENDENT'S ACTION:** An unauthorized insurer aggrieved by any action of the superintendent may request a hearing before the superintendent pursuant to Section 59A-4-15 NMSA 1978 et seq.

[1/1/99; Recompiled 11/30/01]

**13.19.2.16 NOTICE OF WITHDRAWAL:** If the superintendent withdraws eligibility from an eligible surplus lines insurer, the superintendent shall promptly mail notice of such withdrawal to the insurer and to every surplus lines broker. Surplus lines brokers who placed insurance with such insurer shall follow the requirements in 13 NMAC 19.2.10.2 [now Subsection B of 13.19.2.10 NMAC].  
[1/1/99; Recompiled 11/30/01]

**13.19.2.17 DOCUMENTATION AND REPORTING REQUIREMENTS:**

A. The producing broker shall maintain files documenting the diligent search for an authorized insurer and supporting the producing broker affidavit in accordance with Section 59A-12-21 NMSA 1978. Each producing broker who places any surplus lines insurance shall comply with the affidavit requirement of Section 59A-14-11 NMSA 1978 by providing the form prescribed in 13 NMAC 19.2.19 [now 13.19.2.19 NMAC] to the surplus lines broker within fifteen days of issuance of the policy.

B. The superintendent interprets Section 59A-14-11 NMSA 1978 to permit the surplus lines broker to substitute the declarations page of the policy for the producing broker report required by subsection A of that section. The declarations page shall be kept confidential.

C. Each surplus lines broker shall comply with the reporting and affidavit requirements of Section 59A-14-11 NMSA 1978 and shall file the following documents using the forms and electronic format prescribed in this rule:

- (1) the quarterly summary report form prescribed in 13 NMAC 19.2.20 [now 13.19.2.20 NMAC];
- (2) a diskette containing the following information in the following format:

Item No.	Information required	Type of field	Number of characters or format
1	Name of insurer	Text	80
2	NAIC company code or alien listing code	Text	12
3	Policy number	Text	40
4	Effective date of policy	Date	mm/dd/yyyy
5	Termination date of policy	Date	mm/dd/yyyy
6	Specific description of coverage	Text	160
7	Premium	Number	2 decimal places
8	Additional premium	Number	2 decimal places
9	Cancellation or return premium	Number	2 decimal places
10	Additional fees	Number	2 decimal places
11	Total	Number	2 decimal places
12	State tax (3% of Total)	Number	2 decimal places

(3) two copies of a printout made from the diskette, one of which will be returned to the surplus lines broker as proof of filing the report; the printout shall show totals in each number column;

(4) the declarations page of the policy attached to the producing broker affidavit for each surplus lines insurance policy written, in the order in which they appear on the diskette and printout;

(5) a check for the amount of taxes due.

D. Each surplus lines insurer shall file the following documents with the superintendent on or before March 1 of each year, using the form and the electronic format prescribed in this rule:

(1) The annual summary report prescribed in 13 NMAC 19.2.21 [now 13.19.2.21 NMAC], listing all surplus lines insurance policies written for risks in New Mexico in the preceding calendar year and indicating the surplus lines broker through whom they were placed.

(2) A diskette containing the following information in the following format:

Item No.	Information required	Type of field	Number of characters
1	Policy number	Text	12
2	Effective date of policy	Date	mm/dd/yyyy
3	Termination date of policy	Date	mm/dd/yyyy

4	Kind of insurance	Text	100
5	Zip code of insured	Text	10
6	Premium	Number	2 decimal places
7	Additional premium	Number	2 decimal places
8	Cancellation or return premium	Number	2 decimal places
9	Additional fees	Number	2 decimal places
10	Total	Number	2 decimal places
11	State tax (3% of Total)	Number	2 decimal places

(3) Two copies of a printout made from the diskette, one of which will be returned to the surplus lines insurer as proof of filing the report; the printout shall show totals in each number column.  
[1/1/99; Recompiled 11/30/01]

**13.19.2.18 SIGNATURE AND SPECIAL ENDORSEMENT OF SURPLUS LINE POLICY:** If the statement required by NMSA 1978 Section 59A-14-5 does not fit on the declarations page of the policy, the superintendent will accept the New Mexico surplus line brokers' countersignature endorsement prescribed in 13 NMAC 19.2.22 [now 13.19.2.22 NMAC] on a separate page containing the statement required by statute.  
[1/1/99; Recompiled 11/30/01]

**13.19.2.19 PRODUCING BROKER AFFIDAVIT:** This affidavit shall be completed by the producing broker (e.g., the agent selling the product) and submitted to the surplus lines broker within fifteen days of issuance of the policy.

PRODUCING BROKER AFFIDAVIT  
(Required by 59A-14-11B NMSA 1978 Section)

Name of producing broker: \_\_\_\_\_

Address of producing broker: \_\_\_\_\_

Being duly sworn, I affirm that:

1. I was engaged to obtain the following policy:

Insurer: \_\_\_\_\_

Policy number: \_\_\_\_\_

Type of coverage: \_\_\_\_\_

Effective date: \_\_\_\_\_

2. (Check **either A or B** below, as appropriate)

\_\_\_ A. After making a diligent search I found that the full amount or type of insurance requested could not be obtained from authorized insurers in New Mexico.

**or**

\_\_\_ B. Within the last year, I have tried to place this type of coverage with at least four insurers authorized in New Mexico, including insurers by whom I am not appointed, and therefore know from substantial recent experience that this coverage cannot be obtained from any authorized insurer in New Mexico.

3. I expressly advised the insured prior to placing the insurance, and the insurance policy states, that:

A. the insurer with whom the insurance is placed is not an authorized insurer in New Mexico and is not subject to the supervision of the superintendent of insurance; and

B. in the event the insurer becomes insolvent, claims will not be paid by any New Mexico guaranty association.

4. I have asked the insured and, to the best of my knowledge, this coverage is not replacing existing coverage from an authorized insurer who was willing to continue providing coverage.

5. I certify that I am licensed by the New Mexico department of insurance for the type of coverage provided and that the information in this form is true and correct and is in compliance with the applicable provisions of the New Mexico insurance code and this rule.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

SUBSCRIBED AND SWORN TO before me  
this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_  
[1/1/99; Recompiled 11/30/01]

**13.19.2.20 SURPLUS LINES BROKER QUARTERLY SUMMARY REPORT FORM:**  
**SURPLUS LINES BROKER QUARTERLY SUMMARY REPORT**  
(Required by NMSA 1978 Section 59A-14-11C & D)

Name of broker: \_\_\_\_\_

Address of broker: \_\_\_\_\_

License number: \_\_\_\_\_

I hereby submit to the New Mexico Department of Insurance this summary of all surplus lines insurance I placed during the quarter beginning \_\_\_\_/\_\_\_\_/\_\_\_\_ and ending \_\_\_\_/\_\_\_\_/\_\_\_\_. All documents required by Section 59A-14-11 NMSA 1978 and 13 NMAC 19.2.17.3 [now Subsection C of 13.9.2.17 NMAC] to be filed with the superintendent are attached.

I certify that the information on this form is true and correct and is in compliance with the applicable provisions of the New Mexico insurance code and that the information on the diskette filed with this form is identical to the information on the printouts made from the diskette and filed with this form.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

SUBSCRIBED AND SWORN TO before me  
this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_  
[1/1/99; Recompiled 11/30/01]

**13.19.2.21 SURPLUS LINES INSURER ANNUAL SUMMARY REPORT FORM:  
SURPLUS LINES INSURER ANNUAL SUMMARY REPORT**

Name of insurer \_\_\_\_\_

Address of insurer: \_\_\_\_\_

NAIC company code or alien listing code: \_\_\_\_\_

The insurer hereby submits to the New Mexico department of insurance a summary of all surplus lines insurance provided by the insurer for risks in New Mexico during \_\_\_\_\_.

I certify that the information on this form is true and correct and is in compliance with the applicable provisions of the New Mexico Insurance Code and that the information on the diskette filed with this form is identical to the information on the printouts made from the diskette and filed with this form.

\_\_\_\_\_  
Signature of authorized officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of authorized officer  
[1/1/99; Recompiled 11/30/01]

**13.19.2.22 SURPLUS LINES BROKERS COUNTERSIGNATURE ENDORSEMENT:**

NEW MEXICO SURPLUS LINES BROKER'S COUNTERSIGNATURE ENDORSEMENT

THIS ENDORSEMENT MUST BE ATTACHED TO THE POLICY  
AS PART OF THE INSURANCE CONTRACT

This policy provides surplus lines insurance by an insurer not otherwise authorized to transact business in New Mexico. This policy is not subject to supervision, review or approval by the superintendent of insurance. The insurance so provided is not within the protection of any guaranty fund law of New Mexico designed to protect the public in the event of the insurer's insolvency.

POLICY NUMBER: \_\_\_\_\_

NAME OF INSURED: \_\_\_\_\_

CERTIFICATE NUMBER: \_\_\_\_\_

DATE POLICY SIGNED: \_\_\_\_\_

UNDERWRITING COMPANY: \_\_\_\_\_

\_\_\_\_\_  
Surplus Lines Brokers Signature

[1/1/99; Recompiled 11/30/01]

**HISTORY OF 13.19.2 NMAC:**

Pre-NMAC History: The material in this rule was originally filed with the State Records Center as part of ID 67-1, New Mexico Official Administrative Rules and Regulations Code, on December 1, 1967.

History of Repealed Material:

13 NMAC 19.2, Writing Surplus Line Business, was repealed effective 12-31-98 and was repromulgated as 13 NMAC 19.2, Writing Surplus Line Business, effective 1/1/99.