

This is an amendment to 13.2.2 NMAC, Sections 1, 2, 7, 13, 22, adding a new 23, and renumbering 24, effective 11/19/2024.

**13.2.2.1 ISSUING AGENCY:** New Mexico Office of Superintendent of Insurance [~~(“OSI”)~~].  
[13.18.3.1 NMAC – Rp, 13.18.3.1 NMAC, 7/24/2018; A, 10/01/2020]

**13.2.2.2 SCOPE:** This rule applies to all insurers and affiliates subject to ~~the~~ Chapter 59A, Article 37, NMSA 1978, [~~(“the Insurance Holding Company Law”)~~] (the Insurance Holding Company Law).  
[13.2.2.2 NMAC – Rp, 13.2.2.2 NMAC, 7/24/2018; A, 10/01/2020; A, 11/19/2024]

**13.2.2.7 DEFINITIONS:** The following terms have the meaning given, unless the context otherwise requires. Other terms used in this rule have the meanings given in the Insurance Holding Company Law or in Chapter 59A, NMSA 1978, [~~(“the Insurance Code.”)~~], hereafter the Insurance Code.

**A. “Executive officer”** means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller and any other individual performing functions corresponding to those performed by such officers under whatever title.

**B. “Group-wide supervisor”** means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the superintendent under Section 13.2.2.23 NMAC to have [~~sufficient significant~~] sufficient significant contacts with the internationally active insurance group.

**C. “Internationally active insurance group”** means an insurance holding company system that ~~(1)~~ includes an insurer registered under Section 59A-37-11 NMSA 1978 and ~~(2)~~ meets the following criteria:

- (1) premiums written in at least three countries;
- (2) the percentage of gross premiums written outside the United States is at least ten percent of the insurance holding company system’s total gross written premiums; and
- (3) based on a three-year rolling average, the total assets of the insurance holding company system are at least \$50,000,000,000 or the total gross written premiums of the insurance holding company system are at least \$10,000,000,000.

**D. “NAIC”** means the national association of insurance commissioners.

**E. “OSI”** means the office of superintendent of insurance.

**F. “Receivership act”** means the Receivership Act, Sections 44-8-1 through 44-8-10 NMSA 1978.

~~[F.]~~ **G. “SEC”** means the United States securities and exchange commission.

~~[G.]~~ **H. “Superintendent”** means the superintendent of insurance, the office of superintendent of insurance or employees of the office of superintendent of insurance acting within the scope of the superintendent’s official duties and with the superintendent’s authorization. ~~[and]~~

~~[H.]~~ **I. [~~ultimate~~] “Ultimate controlling person”** means a person that is not controlled by any other person.

[13.2.2.7 NMAC – Rp, 13.2.2.7 NMAC, 7/24/2018; A, 10/01/2020; A, 11/19/2024]

**13.2.2.13 FORM B:**

**A. When required:** An insurer required by Section 59A-37-11 NMSA 1978 to file an annual registration statement shall file Form B in accordance with the requirements of this rule.

**B. Filings on behalf of affiliates:** Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers that are required to register under Section 59A-37-11 NMSA 1978.

**C. Additional information permitted:** A registration statement may include information not required by this rule regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this state.

**D. When copy of domiciliary registration permitted:** In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report that it is required to file in its state of domicile, provided:

- (1) the statement or report contains substantially similar information required to be furnished on Form B; and

(2) the filing insurer is the principal insurance company in the insurance holding company system. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

**E. Filings by unauthorized insurers:** With the prior approval of the superintendent, an unauthorized insurer may follow any of the procedures that could be done by an authorized insurer under Subsections B, C and D of 13.2.2.13 NMAC.

**F. Consolidated filings and alternative registration:** Any insurer may take advantage of the provisions of Sections 59A-37-16 and 17 NMSA 1978 without obtaining the prior approval of the superintendent. The superintendent, however, reserves the right to require individual filings if the superintendent deems such filings necessary in the interest of clarity, ease of administration or the public good.

**G. Information to be furnished in Form B:**

(1) **Caption:** Place the following caption at the top of the cover page:  
FORM B

INSURANCE HOLDING COMPANY ANNUAL REGISTRATION STATEMENT FILED WITH THE NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

(2) **Registrant:** State the name of the registrant filing the statement.

(3) **Other registrants:** State the name and address of each insurance company on whose behalf the statement is being filed.

(4) **Date:** Provide the filing date of the statement.

(5) **Designation of agent:** State the name, title, address and telephone number of the individual to whom notices and correspondence concerning this statement should be addressed.

(6) **Identity and control of registrant:** Furnish the exact name of each insurer registering or being registered, the home office address and principal executive offices of each; the date on which each registrant became part of the insurance holding company system; and the method(s) by which control of each registrant was acquired and is maintained.

(7) **Organizational chart:** Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. The chart or listing should show the percentage of each class of voting securities of each affiliate that is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

(8) **The ultimate controlling person:** Provide the following information about the ultimate controlling person in the insurance holding company system:

(a) name;

(b) home office address;

(c) principal executive office address;

(d) the organizational structure of the person, i.e., corporation, partnership,

individual, trust, etc.;

(e) the principal business of the person;

(f) the name and address of any person who holds or owns ten percent or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and

(g) if court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of the proceedings and the date when commenced.

(9) **Biographical information:** Furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, the individual's principal occupation and all offices and positions held during the past five years, and any conviction for crimes other than minor traffic violations.

(10) **Transactions and agreements:** Briefly describe the following agreements in force, and transactions currently outstanding or that have occurred during the last calendar year between the registrant and its affiliates in such a manner as to permit the proper evaluation of the transaction by the superintendent. Include at least the following information with respect to each: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to the transaction, and the relationship of the affiliated parties to the registrant. No information need be disclosed if such information is not

material for purposes of Section 59A-37-11 NMSA 1978. Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of one percent or less of the registrant's admitted assets as of the 31st day of December next preceding shall be deemed not material.

(a) loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the registrant or of the registrant by its affiliates;

(b) purchases, sales or exchanges of assets;

(c) transactions not in the ordinary course of business;

(d) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the registrant's business;

(e) all management agreements, service contracts and all cost-sharing arrangements;

(f) reinsurance agreements;

(g) dividends and other distributions to shareholders;

(h) consolidated tax allocation agreements; and

(i) any pledge of the registrant's stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

**(11) Litigation or administrative proceedings:** Provide a brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

(a) criminal prosecutions or administrative proceedings by any government agency or authority that may be relevant to the trustworthiness of any party to the proceedings; and

(b) proceedings that may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganization.

**(12) Statement regarding plan or series of transactions:** The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

**(13) Financial statements and exhibits:**

(a) List under this item the financial statements and exhibits to be attached to this statement as appendices.

(b) If the ultimate controlling person is a corporation, an organization, a limited liability company, or ~~the~~ other legal entity, the financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year. If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis; or, unless the superintendent otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

(c) Other than with respect to the foregoing, such financial statements shall be filed in a standard form and format adopted by the NAIC, unless an alternative form is accepted by the superintendent. Documentation and financial statements filed with the SEC or audited GAAP financial statements shall be deemed to be an appropriate form and format.

(d) Unless the superintendent otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the annual statement of the insurer filed with the insurance department of the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

(e) Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be

conducted in accordance with the standards for review of personal financial statements published in the *Personal Financial Statements Guide* by the American Institute of Certified Public Accountants. Personal financial statements shall be accompanied by the independent public accountant’s Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting practices.

(f) Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Form B or 13.2.2.10 NMAC.

(14) **Signature and certification:** The following signature and certification are required at the end of Form B.

Pursuant to the requirements of Section 59A-37-12 NMSA 1978, registrant has caused this annual registration statement to be duly signed on its behalf in the city of [insert name of city] and state of New Mexico on [insert date].

(SEAL)

BY: \_\_\_\_\_

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name of Applicant)

Attest:

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

The undersigned deposes and says that they have duly executed the attached annual registration statement dated [insert date], for and on behalf of [insert name of registrant]; that they are the [insert title of deponent] of such company and that they are authorized to execute and file this instrument. Deponent further says that they are familiar with the instrument and its contents, and that the facts set forth in the instrument are true to the best of their knowledge, information and belief.

\_\_\_\_\_  
(Signature of deponent)

\_\_\_\_\_  
(Typed name and title of deponent)

[13.2.2.13 NMAC – Rp, 13.2.2.13 NMAC, 7/24/2018; A, 10/01/2020; A, 11/19/2024]

### 13.2.2.22 GROUP-WIDE SUPERVISION OF INTERNATIONALLY ACTIVE INSURANCE

#### GROUPS:

**A.** The superintendent may act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section. However, the superintendent may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

- (1) Does not have substantial insurance operations in the United States;
- (2) Has substantial insurance operations in the United States, but not in this state; or
- (3) Has substantial insurance operations in the United States and this state, but the

superintendent has determined pursuant to the factors set forth in Subsections B and F of this section that the other regulatory official is the appropriate group-wide supervisor.

An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the superintendent make a determination or acknowledgment as to a group-wide supervisor pursuant to this section.

**B.** In cooperation with other state, federal and international regulatory agencies, the superintendent will identify a single group-wide supervisor for an internationally active insurance group. The superintendent may determine that the superintendent is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the superintendent may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The superintendent shall consider the following factors when making a determination or acknowledgment under this subsection:

- (1) The place of domicile of the insurers within the internationally active insurance group that holds the largest share of the group's written premiums, assets or liabilities;
- (2) The place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group;
- (3) The location of the executive offices or largest operational offices of the internationally active insurance group;
- (4) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the superintendent determines to be:
  - (a) Substantially similar to the system of regulation provided under the laws of this state, or
  - (b) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and
- (5) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the superintendent with reasonably reciprocal recognition and cooperation.
- (6) However, a regulatory official identified in this section as the group-wide supervisor may determine that it is appropriate to ~~acknowledge~~ acknowledge another supervisor to serve as the group-wide supervisor. Acknowledgement of the group-wide supervisor shall be made after consideration of the factors listed in Paragraph (1) through (5) above, and shall be made in cooperation with and subject to the acknowledgement of other regulatory officials involved with supervision of a member of the internationally active insurance group, and in consultation with the internationally active insurance group.

**C.** Notwithstanding any other provisions of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the superintendent shall acknowledge that regulatory official as the group-wide supervisor. However, in the event of material change in the internationally active insurance group that results in either:

- (1) The internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets or liabilities; or
- (2) This state being the place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group, then the superintendent shall make a determination or acknowledgement as to the appropriate group-wide supervisor for such internationally active insurance group pursuant to Subsection B of this section.

**D.** Pursuant to Section 59A-37-23 NMSA 1978, the superintendent is authorized to collect from any insurer registered pursuant to Section 59A-37-11 NMSA 1978, all information necessary to determine whether the superintendent may act as the group-wide supervisor of an internationally active insurance group or if the superintendent may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the superintendent, the superintendent will notify the insurer registered pursuant to Section 59A-37-11 NMSA 1978, and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than 30 days to provide the superintendent with additional information pertinent to the pending determination. The OSI will publish on its website the identity of internationally active insurance groups that the superintendent has determined are subject to group-wide supervision by the superintendent.

**E.** If the superintendent is the group-wide supervisor for an internationally active insurance group, the superintendent is authorized to engage in any of the following group-wide supervision activities:

- (1) Assess the enterprise risk within the internationally active insurance group to ensure that:
  - (a) The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management, and
  - (b) Reasonable and effective mitigation measures are in place;
- (2) Request from any member of an internationally active insurance group subject to the superintendent's supervision, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:
  - (a) Governance, risk assessment and management,
  - (b) Capital adequacy, and
  - (c) Material intercompany transactions;
- (3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize

and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;

(4) Communicate with other state, federal and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of Section 59A-37-24 NMSA 1978, through supervisory colleges as provided in this rule or otherwise;

(5) Enter into agreements with or obtain documentation from any insurer registered under Section 59A-37-11 NMSA 1978, any member of the internationally active insurance group, and any other state, federal and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the superintendent's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

(6) Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the superintendent.

F. If the superintendent acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the superintendent may reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, provided that:

(1) The superintendent's cooperation is in compliance with the laws of this state; and

(2) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the superintendent's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the superintendent is authorized to refuse recognition and cooperation.

G. The superintendent may enter into agreements with or obtain documentation from any insurer registered under Section 59A-37-11 NMSA 1978, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

H. A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the superintendent's participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.

I. All information, data, reports and workpapers filed with and collected by the superintendent pursuant to this section will be obtained in accordance with Section 59A-4-5 NMSA 1978 and subject to the confidentiality provisions of Section 59A-4-11 and 59A-37-24, NMSA 1978, and the stricter of these provisions shall apply.

[13.2.2.22 NMAC – N, 10/01/2020; A, 11/19/2024]

### **13.2.2.23 TRANSACTIONS SUBJECT TO PRIOR NOTICE – NOTICE FILING:**

**A.** An insurer required to give notice of a proposed transaction pursuant to 13.2.2.11 NMAC, shall furnish the required information on Form D, hereby made a part of these regulations.

**B.** Agreements for cost sharing services and management services shall at a minimum and as applicable:

(1) Identify the person providing services and the nature of such services;

(2) set forth the methods to allocate costs;

(3) require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the accounting practices and procedures manual;

(4) prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(5) state that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(6) define records and data of the insurer to include all records and data developed or maintained under or related to the agreement that are otherwise the property of the insurer, in whatever form maintained, including, but not limited to, claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records or similar records within the possession, custody or control of the affiliate;

(7) specify that all records and data of the insurer are and remain the property of the insurer, and:

(a) are subject to control of the insurer;  
(b) are identifiable; and  
(c) are segregated from all other persons' records and data or are readily capable of segregation at no additional cost to the insurer;  
(8) state that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;  
(9) include standards for termination of the agreement with and without cause;  
(10) include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services and for any actions by the affiliate that violate provisions of the agreement required in Paragraphs (11) through (15) of Subsection B of this section;  
(11) specify that if the insurer is placed in supervision, seizure, conservatorship or receivership pursuant to the receivership act:  
(a) all of the rights of the insurer under the agreement extend to the receiver or to the extent permitted by New Mexico law;  
(b) all records and data of the insurer shall be identifiable and segregated from all other persons' records and data or readily capable of segregation at no additional cost to the receiver or the superintendent;  
(c) a complete set of records and data of the insurer will immediately be made available to the receiver or the superintendent, shall be made available in a usable format and shall be turned over to the receiver or superintendent immediately upon the receiver or the superintendent's request, and the cost to transfer data to the receiver or the superintendent shall be fair and reasonable; and  
(d) the affiliated person(s) will make available all employees essential to the operations of the insurer and the services associated therewith for the immediate continued performance of the essential services ordered or directed by the receiver or superintendent;  
(12) specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed into supervision, seizure, conservatorship or receivership pursuant to the receivership act;  
(13) specify that the affiliate will provide the essential services for a minimum period of time (specified in the agreement) after termination of the agreement, if the insurer is placed into supervision, seizure, conservatorship or receivership pursuant to the receivership act, as ordered or directed by the receiver or superintendent. Performance of the essential services will continue to be provided without regard to pre-receivership unpaid fees, so long as the affiliate continues to receive timely payment for post-receivership services rendered, and unless released by the receiver, superintendent or supervising court;  
(14) specify that the affiliate will continue to maintain any systems, programs or other infrastructure, notwithstanding supervision, seizure, conservatorship or receivership pursuant to the receivership act, and will make them available to the receiver or superintendent as ordered or directed by the receiver or superintendent for so long as the affiliate continues to receive timely payment for post-receivership services rendered, and unless released by the receiver, superintendent or supervising court; and  
(15) specify that, in furtherance of the cooperation between the receiver and the affected guaranty association(s) and subject to the receiver's authority over the insurer, if the insurer is placed into supervision, seizure, conservatorship or receivership pursuant to the receivership act, and portions of the insurer's policies or contracts are eligible for coverage by one or more guaranty associations, the affiliate's commitments under Paragraphs (11) through (15), of Subsection B of this section will extend to such guaranty association(s).  
[13.2.2.23 NMAC – N, 11/19/2024]

**[~~13.2.2.23~~ 13.2.2.24 SEVERABILITY CLAUSE:** If any provision of this rule or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this rule which can be given effect without the invalid provision or application, and to that end, the provisions of this rule are severable.

[13.2.2.24 NMAC – Rn & A, 13.2.2.21 NMAC, 10/01/2020; Rn, 13.2.2.23 NMAC, 11/19/2024]

**History of 13.2.2 NMAC: [RESERVED]**