

TITLE 13 INSURANCE
CHAPTER 2 INSURANCE COMPANY LICENSING AND OPERATION
PART 2 INSURANCE HOLDING COMPANIES

13.2.2.1 ISSUING AGENCY: New Mexico Office of Superintendent of Insurance [~~P.O. Box 1689, Santa Fe, NM 87504-1689~~] (“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 [~~Insurance Holding Company Law,~~] Chapter 59A, Article 37, NMSA 1978 (“the Insurance Holding Company Law”).
[13.2.2.2 NMAC – Rp, 13.2.2.2 NMAC, 7/24/2018; A, 10/01/2020]

13.2.2.3 STATUTORY AUTHORITY: Authority for this rule derives from the superintendent’s powers under Section 59A-2-9 NMSA 1978 and from the Insurance Holding Company Law, Chapter 59A, Article 37, NMSA 1978.
[13.2.2.3 NMAC – Rp, 13.2.2.3 NMAC, 7/24/2018]

13.2.2.4 DURATION: Permanent.
[13.2.2.4 NMAC – Rp, 13.2.2.4 NMAC, 7/24/2018]

13.2.2.5 EFFECTIVE DATE: July 24, 2018, unless a later date is cited at the end of a section.
[13.2.2.5 NMAC – Rp, 13 NMAC 2.2.5, 7/24/2018; A, 10/01/2020]

13.2.2.6 OBJECTIVE: The purpose of this rule is to specify the contents of the statements required to be filed with the superintendent pursuant to [~~Chapter 59A, Article 37 NMSA 1978 (“the Insurance Holding Company Law~~)]⁽²⁾.
[13.2.2.6 NMAC – Rp, 13.2.2.6 NMAC, 7/24/2018; A, 10/01/2020]

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.”).

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 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.

~~[B]~~ **D. “NAIC”** means the national association of insurance commissioners;

~~[C]~~ **E. “OSI”** means the office of superintendent of insurance;

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

~~[E]~~ **G. “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

~~[F]~~ **H. “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]

13.2.2.8 SUBSIDIARIES OF DOMESTIC INSURERS: The authority to invest in subsidiaries under Subsection B of Section 59A-37-3 NMSA 1978 is in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code.
[13.2.2.8 NMAC – Rp, 13.2.2.8 NMAC, 7/24/2018]

13.2.2.9 ADEQUACY OF SURPLUS: [~~The factors set forth in Section 59A-37-21 NMSA 1978 are not intended to be an exhaustive list.~~] In determining the adequacy and reasonableness of an insurer's surplus, no single factor is necessarily controlling. The superintendent [~~instead~~] will consider the net effect of all [~~of these~~] factors [~~plus~~] set forth in Section 59A-37-21 NMSA 1978 and other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the superintendent will consider the extent to which each of these factors varies from company to company. In determining the quality and liquidity of investments in subsidiaries, the superintendent will consider the individual subsidiary and may discount or disallow its valuation to the extent that individual investments so warrant.
[13.2.2.9 NMAC – Rp, 13.2.2.9 NMAC, 7/24/2018; A, 10/01/2020]

13.2.2.10 GENERAL REQUIREMENTS FOR PREPARING STATEMENTS:

A. Format: Forms A, B, C, D, E and F are intended to be guides in the preparation of the statements required by the Insurance Holding Company Law. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the item numbers and captions of all items required, but the text of the items may be omitted, provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

B. Number of copies:

(1) The applicant [~~must~~] shall file two complete copies of each form, including exhibits and all other papers and documents filed as a part of the statement.

(2) A copy of Form C, included at 13.2.2.14 NMAC, shall be filed in each state in which an insurer is authorized to do business, if the insurance commissioner of that state has notified the insurer of its request in writing, in which case the insurer has 20 days from receipt of the notice to file such form.

C. Filing methods: Forms shall be filed with the examinations bureau at OSI by personal delivery, [~~US~~] mail, [~~Federal Express or UPS~~] commercial courier, or as instructed on the OSI website.

D. Signatures: At least one of the copies shall be signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the statement.

E. Electronic preparation: Forms shall be prepared [~~electronically~~] electronically.

F. Readability: Forms shall be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

G. Language and currency: Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency shall be converted into United States currency.

H. Extension of time to file: If it is impractical to furnish any required information, document or report at the time it is required to be filed, a separate document may be filed with the superintendent:

(1) identifying the information, document or report in question;
(2) stating why filing it at the time required is impractical; and
(3) requesting an extension of time for filing the information, document or report to a specified date. The request for extension [~~shall~~] will be deemed granted unless the superintendent enters an order denying the request within 60 days after receiving it.

I. Additional information: In addition to the information expressly required to be included in each statement, the superintendent may request such further material information [~~if any,~~] as may be necessary to make the information contained in the statement not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. The exhibits shall be marked so as to indicate clearly the subject matters to which they refer.

J. Changes to statements: Changes to statements shall include on the top of the cover page the phrase: “Change No. [insert number] to Form [insert letter]” and shall indicate the date of the change and not the date of the original filing.

K. Hearing on a Consolidated Basis: If an applicant requests a hearing on a consolidated basis under Subsection D of Section 59A-37-6 NMSA 1978, in addition to filing the Form A with the superintendent, the applicant shall file a copy of Form A with the NAIC in electronic form.
[13.2.2.10 NMAC – Rp, 13.2.2.10 NMAC, 7/24/2018; A, 10/01/2020]

13.2.2.11 OPTIONS PERMITTED IN FORMS:

A. Incorporation by reference:

- (1) Information required by any item of Form A, Form B, Form D, Form E, or Form F may be incorporated by reference in answer or partial answer to any other item.
- (2) Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, Form D, Form E or Form F, provided the document is filed as an exhibit to the statement.
- (3) Excerpts of documents may be filed as exhibits if the documents are extensive.
- (4) Documents currently on file with the superintendent which were filed within the past three years need not be attached as exhibits.
- (5) References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item.
- (6) Matter shall not be incorporated by reference in any case where the incorporation would render the statement incomplete, unclear or confusing.

B. Summaries: Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the superintendent which was filed within three years and may be qualified in its entirety by such reference.

C. Omissions: In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties, the dates of execution, or other details, a copy of only one of the documents need be filed, together with a schedule identifying the omitted documents and setting forth the material details in which the omitted documents differ from the filed documents.
[13.2.2.11 NMAC – Rp, 13.2.2.11 NMAC, 7/24/2018; A, 10/01/2020]

13.2.2.12 FORM A:

A. When required: A person required by Section 59A-37-4 NMSA 1978 to file a statement shall furnish the required information on Form A in accordance with the requirements of this rule. Such a person shall also furnish the required information on Form E, hereby made a part of this rule and described in 13.2.2.16 NMAC.

B. Amendments: The applicant shall promptly advise the superintendent of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the superintendent’s disposition of the application.

C. Information to be furnished in Form A:

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

FORM A

STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC
INSURER FILED WITH THE NEW MEXICO SUPERINTENDENT OF INSURANCE

(2) **Domestic insurers:** Provide the name and state of domicile of the domestic insurer being acquired.

(a) if the person being acquired is deemed to be a “domestic insurer” solely because of the provisions of Subsection A of Section 59A-37-4 NMSA 1978, the name of the domestic insurer should be indicated as follows: “ABC Insurance Company, a subsidiary of XYZ Holding Company.”

(b) where a Subsection A of Section 59A-37-4 NMSA 1978 insurer is being acquired, references to “the insurer” in this section shall refer to both the domestic subsidiary insurer and the person being acquired.

- (3) **Applicant:** State the name of the acquiring person.
- (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) **Method of acquisition:** Provide the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

(7) **Identity and background of the applicant:**

(a) State the name and address of the applicant seeking to acquire control over the insurer.

(b) If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as the person and any of its predecessors shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.

(c) Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g. corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, the nature of the proceedings and the date when commenced.

(8) **Identity and background of individuals associated with the applicant:** On the biographical ~~[affidavit]~~ affidavit, include a third party background check and state the following with respect to 1) the applicant if an individual or 2) all persons who are directors, executive officers or owners of ten percent or more of the voting securities of the applicant, if the applicant is not an individual:

(a) name and business address;

(b) present principal business activity, occupation or employment including position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on;

(c) material occupations, positions, offices or employment during the last five years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on; if any such occupation, position, office or employment required licensing by or registration with any federal, state or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith; and

(d) whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last 10 years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

(9) **Nature, source and amount of consideration:**

(a) Describe the nature, source and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding or trading securities, furnish a description of the transaction, the names of the parties to it, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements relating to the transaction.

(b) Explain the criteria used in determining the nature and amount of such consideration.

(c) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, the applicant ~~[must]~~ shall specifically request that the lender's identity be kept confidential.

(10) **Future plans of insurer:** Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate the insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.

(11) **Voting securities to be acquired:** State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.

(12) **Ownership of voting securities:** State the amount of each class of any voting security of the insurer that is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates of any persons listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC.

(13) **Contracts, arrangements, or understandings with respect to voting securities of the insurer:** Give a full description of any contracts, arrangements or understandings with respect to any voting security of the insurer in which the applicant, its affiliates or any person listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom the contracts, arrangements or understandings have been entered into.

(14) **Recent purchases of voting securities:** Describe any purchases of any voting securities of the insurer by the applicant, its affiliates or any person listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC during the 12 calendar months preceding the filing of this statement. Include in the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefor. State whether any shares so purchased are hypothecated.

(15) **Recent recommendations to purchase:** Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates or any person listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates or any person listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC during the 12 calendar months preceding the filing of this statement.

(16) **Agreements with broker-dealers:** Describe the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard to such solicitation.

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

(a) List the financial statements, exhibits and three-year financial projections of the insurer or insurers that are attached to this statement as appendices.

(b) The financial statements shall include the annual financial statements of the persons identified in Subparagraph (c) of Paragraph (7) of Subsection C of 13.2.2.12 NMAC for the preceding five fiscal years (or for such lesser period as the applicant and its affiliates and any of their predecessors shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if the information is available. The 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.

The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant 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 applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the annual statement of the person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the state.

(c) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or 13.2.2.10 NMAC.

(18) **Agreement requirements for enterprise risk management:** Applicant agrees to provide to the best of its knowledge and belief, the information required by Form F within 15 days after the end of the month in which the ~~acquisition~~ acquisition of control occurs.

(19) **Signature and certification:** The following signature and certification are required at the end of Statement A.

Pursuant to the requirements of Section 59A-37-4 NMSA 1978, [insert name of applicant] has caused this application to be duly signed on its behalf in the city of [insert name of city] and state of New Mexico on [insert date].

(SEAL)

(Name of Applicant)

BY: _____

(Title)

Attest:

(Signature of Officer)

(Title)

The undersigned deposes and says that they have duly executed the attached application dated [insert date], for and on behalf of [insert name of applicant]; 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)

[13.2.2.12 NMAC – Rp, 13.2.2.12 NMAC, 7/24/2018; A, 10/01/2020]

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, ~~his or her~~ 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 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~~ 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 ~~are~~ aware of any material modifications that should be made to the financial statements in order for the statements to be in ~~conformity~~ 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]

13.2.2.14 FORM C:

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

B. Where filed: An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the commissioner of that state.

C. Information to be furnished in Form C:

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

SUMMARY OF CHANGES TO 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) **Changes:** Furnish a brief description of all items in the current annual registration statement that represent changes from the prior year’s annual registration statement in such a manner as to permit the proper evaluation of the changes by the superintendent. Include specific references to item numbers and captions in the annual registration statement and to the terms contained in them.

(a) **Changes in Paragraph (7) of Subsection G of 13.2.2.13 NMAC.** Changes in the percentage of each class of voting securities held by each affiliate need only be included where such changes result in ownership or holdings of ten percent or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

(b) **Changes in Paragraph (9) of Subsection G of 13.2.2.13 NMAC.** Include this information only if an individual is, for the first time, made a director or executive officer of the ultimate controlling person; an individual is named president of the ultimate controlling person; or a director or executive officer terminates his or her responsibilities with the ultimate controlling person.

(c) **Changes in Paragraph (10) of Subsection G of 13.2.2.13 NMAC.** If a transaction disclosed on the prior year’s annual registration statement has been changed, describe the nature of such change. If a transaction disclosed on the prior year’s annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction. 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 whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.

(7) **Signature and certification:** The following signature and certification are required at the end of Form C:

Pursuant to the requirements of Section 59A-37-12 NMSA 1978 [insert name of 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)

(Name of applicant)

BY: _____

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)

[13.2.2.14 NMAC – Rp, 13.2.2.14 NMAC, 7/24/2018]

13.2.2.15 FORM D:

A. When required: An insurer required to give notice of a proposed transaction pursuant to Section 59A-37-20 NMSA 1978 shall file Form D in accordance with the requirements of this rule.

B. Information to be furnished in Form D:

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

FORM D

PRIOR NOTICE OF A TRANSACTION 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 of parties to transaction:** Furnish the following information for each of the parties to the transaction:

(a) name;

(b) home office address;

(c) principal executive office address;

(d) the organizational structure, i.e. corporation, partnership, individual, trust, etc.;

(e) a description of the nature of the parties' business operations;

(f) relationship, if any, of other parties to the transaction to the insurer filing the

notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties; and

(g) where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

(7) **Description of the transaction:** Furnish the following information for each transaction for which notice is being given:

(a) a statement as to whether notice is being given under Paragraphs (1) through (5) of Subsection B of Section 59A-37-20 NMSA 1978;

(b) a statement of the nature of the transaction; and

(c) the proposed effective date of the transaction.

(8) Sales, purchases, exchanges, loans, extensions of credit, guarantees or investments:

(a) Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

(b) If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual or deferral of interest.

(c) If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

(d) No notice need be given if the maximum amount that can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than:

(i) in the case of non-life insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders; or

(ii) in the case of life insurers, three percent of the insurer's admitted assets, each as of the 31st day of December next preceding.

(9) Loans or extensions of credit to a non-affiliate:

(a) If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of funds, securities, property or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

(b) No notice need be given if the loan or extension of credit is less than:

(i) in the case of non-life insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders; or

(ii) in the case of life insurers, three percent of the insurer's admitted assets, each as of the 31st day of December next preceding.

(10) Reinsurance:

(a) If the transaction is a reinsurance agreement or modification of a reinsurance agreement as described by Paragraph (3) of Subsection B of Section 59A-37-20 NMSA 1978, or a reinsurance pooling agreement or modification thereto as described by Paragraph (3) of Subsection B of Section 59A-37-20 NMSA 1978, furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

(b) No notice need be given for reinsurance agreements or modifications if the reinsurance premium or a change in the insurer's liabilities or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years in connection with the reinsurance agreement or modification is less than five percent of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding. Notice shall be given for all reinsurance pooling agreements including modifications thereto.

(11) Management, service agreements, and cost-sharing arrangements:

(a) For management and service agreements, furnish:

(i) a brief description of the managerial responsibilities or services to be performed; and

(ii) a brief description of the agreement, including a statement of its duration, together with the brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

(b) For cost-sharing arrangements, furnish:

(i) a brief description of the purpose of the agreement;

(ii) a description of the period of time during which the agreement is to be in effect;

- (iii) a brief description of each party’s expenses or costs covered by the agreement;
- (iv) a brief description of the accounting basis to be used in calculating each party’s costs under the agreement;
- (v) a brief statement as to the effect of the transaction upon the insurer’s policyholder surplus;
- (vi) a statement regarding the cost allocation methods that specifies whether proposed charges are based on “cost or market;” and if market based, the rationale for using market instead of cost, including justification for the company’s determination that amounts are fair and reasonable; and
- (vii) a statement regarding compliance with the *NAIC Accounting Practices and Procedural Manual* regarding expense allocation.

(12) **Signature and certification:** The following signature and certification are required at the end of Form D:

Pursuant to the requirements of Section 59A-37-20 NMSA 1978 [insert name of applicant] has caused this application to be duly signed on its behalf in the city of [insert name of city] and state of New Mexico on [insert date].

(SEAL)

(Name of applicant)

BY: _____

(Title)

Attest: _____

(Signature of officer)

(Title)

The undersigned deposes and says that they have duly executed the attached application dated [insert date], for and on behalf of [insert name of applicant]; 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)

[13.2.2.15 NMAC – Rp, 13.2.2.15 NMAC, 7/24/2018; A, 10/01/2020]

13.2.2.16 FORM E:

A. When required: If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to Subsection A of Section 59A-37-4 NMSA 1978, that person shall file a pre-acquisition notification using Form E, which was developed pursuant to Paragraph (1) of Subsection C Section 59A-37-29 NMSA 1978.

Additionally, if a non-domiciliary insurer licensed to do business in New Mexico is proposing a merger or acquisition pursuant to Section 59A-37-4 NMSA 1978, that person shall file a pre-acquisition notification using Form E. No pre-~~acquisition~~ acquisition notification form need be filed if the ~~acquisition~~ acquisition is beyond the scope of Section 59A-37-4 NMSA 1978 as set forth in Subsection B of Section 59A-37-29 NMSA 1978,

In addition to the information required by Form E, the superintendent may require an expert opinion as to the competitive impact of the proposed acquisition.

B. Information to be furnished in Form E:

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

FORM E

PRE-ACQUISITION NOTIFICATION REGARDING THE POTENTIAL COMPETITIVE IMPACT OF A PROPOSED MERGER OR ACQUISITION BY A NON-DOMICILIARY INSURER DOING BUSINESS IN NEW MEXICO OR BY A DOMESTIC INSURER

- (2) **Applicant:** State the name of the acquiring or merging person.
- (3) **Other person involved in merger or ~~[acquisition]~~ acquisition:** State the name of the other person involved in the merger or ~~[acquisition]~~ acquisition.
- (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 correspondences concerning this statement should be addressed.
- (6) **Identity of persons involved:** State the names and addresses of the persons who hereby provide notice of their involvement in a pending ~~[acquisition]~~ acquisition or change in corporate control.
- (7) **Identity of persons affiliated with persons involved:** State the names and addresses of the persons affiliated with those listed in Item (6). Describe their affiliations.
- (8) **Nature and purpose of proposed merger or acquisition:** State the nature and purpose of the proposed merger or acquisition.
- (9) **Nature of business:** State the nature of the business performed by each of the persons identified in Paragraphs (6) and (7) of Subsection B of 13.2.2.16 NMAC.
- (10) **Market and market share:**
 - (a) For purposes of this question, “market” means direct written insurance premium in New Mexico for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.
 - (b) For each person identified in Paragraphs (6) and (7) of Subsection B of 13.2.2.16 NMAC, state specifically what market and market share in each relevant insurance market the persons currently enjoy in New Mexico and provide historical market and market share data for the past five years including the source of such data.
 - (c) Provide a determination as to whether the proposed ~~[acquisition]~~ acquisition or merger, if ~~[consummated]~~ consummated, would violate the ~~[competitive]~~ competitive standards of New Mexico as stated in Section 59A-37-29 NMSA 1978. If the proposed acquisition or merger would violate competitive standards, provide justification ~~[of]~~ that the ~~[acquisition]~~ acquisition or merger would not substantially lessen competition or create a monopoly in New Mexico.
[13.2.2.16 NMAC – Rp, 13.2.2.16 NMAC, 7/24/2018; A, 10/01/2020]

13.2.2.17 FORM F:

- A. **When required:** The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to Section 59A-37-30 shall furnish the required information on Form F.
- B. **Information to be furnished on Form F:**
 - (1) **Caption:** Place to following caption at the top of the cover page:
FORM F
ENTERPRISE RISK REPORT
 - (2) **Registrant/applicant:** State the name of the registrant or applicant filing the statement.
 - (3) **Other registrants/applicants:** State the name and address of each insurance company on whose behalf, or related to which, 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 correspondences concerning this statement should be addressed.
 - (6) **Enterprise risk:** The registrant/applicant, to the best of its knowledge and belief, shall provide information regarding the following areas that could produce enterprise risk as defined in Subsection D of Section 59A-37-2 NMSA 1978, provided such information is not disclosed in the *Insurance Holding Company System Annual Registration Statement* filed on behalf of itself or another insurer for which it is the ultimate controlling person:
 - (a) any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system;
 - (b) acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the insurance holding company system;
 - (c) any changes of shareholders of the insurance holding company system exceeding ten percent or more of voting securities;
 - (d) developments in various investigations, regulatory activities or litigation that may have significant bearing or impact on the insurance holding company system;

- (e) business plan of the insurance holding company system and summarized strategies for the next 12 months;
- (f) identification of material concerns of the insurance holding company system raised by a supervisory college, if any, in the last year;
- (g) identification of insurance holding company system capital resources and material distribution patterns;
- (h) identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook);
- (i) information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon; and
- (j) identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

The registrant/applicant may attach the ~~[appropriate]~~ appropriate form most recently filed with the SEC, provided the registrant/applicant includes specific references to those areas listed in Paragraph (6) of Subsection B of 13.2.2.17 NMAC for which the form provided responsive information. If the registrant/applicant is not domiciled in the United States, it may attach its most recent audited financial statement filed in its country of domicile[s], provided the registrant/~~[applicant]~~ applicant includes specific reference to those areas in Paragraph (6) for which the financial statement provides responsive information.

(7) ~~[Obligation]~~ **Obligation to report:** If the registrant/applicant has not disclosed any information pursuant to Paragraph (6) of Subsection B of 13.2.2.17 NMAC, the registrant/applicant shall include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to ~~[Paragraph]~~ Paragraph (6).
[13.2.2.17 NMAC – Rp, 13.2.2.17 NMAC, 7/24/2018; A, 10/01/2020]

13.2.2.18 FORM G:

A. When required: Subject to Section 59A-37-22 NMSA 1978 ~~[each]~~ a registered insurer shall file Form G to report to the superintendent all dividends and other distributions to shareholders within 15 business days following the declaration of such dividends or distributions.

B. Information to be furnished in Form G:

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

NOTICE OF DECLARATION OF DIVIDENDS OR OTHER DISTRIBUTIONS TO SHAREHOLDERS

- (2) **Applicant:** Provide the name and address of the insurer filing the report.
(3) **Calculations:** Provide a copy of the calculations determining the proposed dividends.

The work paper shall include the following information:

- (a) the amounts, dates and form of payment of all dividends or distributions (including regular dividends, but excluding distributions of the insurer's own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;
- (b) surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding;
- (c) if the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;
- (d) if the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods; and
- (e) if the insurer is not a life insurer, the dividends paid to stockholders, excluding distributions of the insurer's own securities in the preceding two calendar years.

[13.2.2.18 NMAC – Rp, 13.2.2.18 NMAC, 7/24/2018; A, 10/01/2020]

13.2.2.19 FORM H:

A. When required:

- (1) A person claiming that they do not, or will not upon the taking of some proposed action, control another subject person shall file Form H in accordance with this rule.

(2) A person requesting termination of registration shall file Form H in accordance with this rule.

B. A request for termination of registration shall be deemed to have been granted unless the superintendent, within thirty days after receipt of the request, notifies the registrant otherwise.

C. Information required in Form H:

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

FORM H

DISCLAIMER OF AFFILIATION OR REQUEST FOR TERMINATION OF REGISTRATION

(2) **Disclaimant:** Provide the name, address, and telephone number and email of the person disclaiming affiliation or requesting termination of registration.

(3) **Subject person:** Provide the name, address, and telephone number and email of the person no longer affiliated with or subject to the control of the disclaimant.

(4) **Voting securities:** Provide the number of authorized, issued and outstanding voting securities of the subject person.

(5) **Shares held by disclaimant:** With respect to the disclaimant and all affiliates of the disclaimant, indicate the number and percentage of shares of the subject person's voting securities which are held of record or known to be beneficially owned, and the number of shares the disclaimant has a right to acquire, directly or indirectly.

(6) **Affiliations:** Describe all material relationships and bases for affiliation between the subject person and disclaimant and all affiliates of the disclaimant.

(7) **Explanation:** State why the disclaimant should not be considered to control the subject person.

[13.2.2.19 NMAC – Rp, 13.2.2.19 NMAC, 7/24/2018]

13.2.2.20 FORM I:

A. When required: ~~Each~~ A domestic insurer required by Section 59A-37-22 NMSA 1978 to give prior notice to the superintendent of the declaration of any extraordinary dividend or any other extraordinary distribution to its shareholders shall file Form I in accordance with the requirements of this rule.

B. Information to be furnished in Form I:

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

FORM I

REQUEST FOR APPROVAL OF EXTRAORDINARY DIVIDENDS OR ANY OTHER EXTRAORDINARY DISTRIBUTION TO SHAREHOLDERS

(2) **Applicant:** Provide the name and address of the insurer filing the request.

(3) **Amount:** State the amount of the proposed dividend.

(4) **Payment date:** Indicate the date established for payment of the dividend.

(5) **Mode of payment:** State whether the dividend is to be paid in cash or other property and, if in property, describe the property, its cost, and its fair market value, and explain the basis for valuation.

(6) **Calculations:** Provide a copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:

(a) the amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;

(b) Surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding;

(c) if the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;

(d) if the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods; and

(e) if the insurer is not a life insurer, the dividends paid to stockholders, excluding distributions of the insurer's own securities in the preceding two calendar years.

(7) **Balance sheet:** Provide a balance sheet and statement of income for the period intervening from the last annual statement filed with the superintendent and the end of the month preceding the month in which the request for dividend approval is submitted.

(8) **Effect on surplus:** Provide a brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.
[13.2.2.20 NMAC – Rp, 13.2.2.20 NMAC, 7/24/2018]

13.2.2.21 SUPERVISORY COLLEGES:

A. Participation by superintendent. With respect to any insurer registered under Section 59A-37-11 NMSA 1978, and in accordance with Subsection C below, the superintendent may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with these rules. The superintendent may, with respect to supervisory colleges:

- (1) Initiate the establishment of a supervisory college;
- (2) Clarify the membership and participation of other supervisors in the supervisory college;
- (3) Clarify the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
- (4) Coordinate the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing;
- (5) Establish a crisis management plan; and
- (6) Take other reasonable actions within the scope of the superintendent's authority.

B. Expenses. A registered insurer subject to this section shall be liable for and shall pay the reasonable expense of the superintendent's participation in a supervisory college in accordance with Subsection C below, including reasonable travel expenses. For purpose of this section, a supervisory college may be covered as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the superintendent may establish regular assessment to the insurer for the payment of these expenses.

C. Supervisory College. In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with Section 59A-37-23 NMSA 1978, the superintendent may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The superintendent may enter into agreements in accordance with Section 59A-37-23 NMSA 1978 providing the basis for cooperation between the superintendent and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the superintendent to regulate or supervise the insurer or its affiliates within the superintendent's jurisdiction.

[13.2.2.21 NMAC – N, 10/01/2020]

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) The location of the executive offices or largest operational offices of the internationally active insurance group;

(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 another supervisor to serve as the group-wide supervisor. The 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.

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 NMSA 1978.

[13.2.2.22 NMAC – N, 10/01/2020]

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

[13.2.2.23 NMAC – Rp & A, 13.2.2.21 NMAC, 10/01/2020]