

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

13.19.2.1 ISSUING AGENCY: Office of Superintendent of Insurance
[13.19.2.1 NMAC, Rp.13.19.2.1 NMAC, 04/21/2026]

13.19.2.2 SCOPE: This rule applies to the transaction of surplus lines insurance business within the state.
[13.19.2.2 NMAC, Rp.13.19.2.2 NMAC, 04/21/2026]

13.19.2.3 STATUTORY AUTHORITY: Sections 14-4-1 *et seq.*, NMSA 1978, State Rules Act, Section 59A-2-9 NMSA 1978, Subsection F of Section 59A-14-4 NMSA 1978, and Subsection I of Section 59A-6-1 NMSA 1978.
[13.19.2.3 NMAC, Rp.13.19.2.3 NMAC, 04/21/2026]

13.19.2.4 DURATION: Permanent.
[13.19.2.4 NMAC, Rp.13.19.2.4 NMAC, 04/21/2026]

13.19.2.5 EFFECTIVE DATE: April 21, 2026, unless a later date is cited at the end of a section.
[13.19.2.5 NMAC, Rp.13.19.2.5 NMAC, 04/21/2026]

13.19.2.6 OBJECTIVE: The purpose of this rule is to implement Chapter 59A, Article 14 NMSA 1978 Surplus Line Insurance.
[13.19.2.6 NMAC, Rp.13.19.2.6 NMAC, 04/21/2026]

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

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

[13.19.2.7 NMAC, Rp.13.19.2.7 NMAC, 04/21/2026]

13.19.2.8 EXPORT ON BASIS OF RATE PROHIBITED: The possibility or actuality that insurance may be obtained at a lower cost from an unauthorized insurer is not sufficient rationale for the transaction of surplus lines insurance if an authorized insurer is willing to provide the insurance.
[13.19.2.8 NMAC, Rp.13.19.2.8 NMAC, 04/21/2026]

13.19.2.9 PROHIBITION ON ARTIFICIAL DIVISION OF COVERAGE:

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

[13.19.2.9 NMAC, Rp.13.19.2.9 NMAC, 04/21/2026]

13.19.2.10 INVESTIGATION OF FINANCIAL CONDITION OF INSURER:

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

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

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

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

[13.19.2.10 NMAC, Rp.13.19.2.10 NMAC, 04/21/2026]

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

[13.19.2.11 NMAC, Rp.13.19.2.11 NMAC, 04/21/2026]

13.19.2.12 APPLICATION PROCESS FOR SURPLUS LINES INSURER:

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

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

- (1) a non-refundable fee of \$1,000.00 for registration;
- (2) a letter requesting approval as an eligible surplus lines insurer;
- (3) documentation showing the minimum capital and surplus requirements for eligibility is \$15,000,000.00;
- (4) a properly executed power of attorney authorizing the superintendent to accept service of process on behalf of the insurer;
- (5) a document indicating compliance by the insurer with the laws of its home state as to the kind or kinds of insurance which the insurer is authorized to transact in its state of domicile, certified by the state of domicile;
- (6) a surplus lines insurer contact processing form prescribed by the superintendent; and
- (7) any other information the superintendent may require.

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

[13.19.2.12 NMAC, Rp.13.19.2.12 NMAC, 04/21/2026]

13.19.2.13 [RESERVED]

[13.19.2.13 NMAC, Repealed, 04/21/2026]

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

- A.** the insurer's key management, owners or other employees have been involved in fraud, mismanagement, bankruptcy or other activities that reflect unfavorably on the integrity of the insurer;
- B.** the insurer operates through managing general agents without appropriate safeguards;
- C.** the insurer has a material conflict of interest;
- D.** the insurer has been in business for less than three years;
- E.** the insurer has had new owners or management for less than three years;
- F.** the insurer has an a.m. best's rating of B or lower;

- G.** the insurer has had three or more adverse IRIS reports, unless the superintendent accepts a valid explanation by the insurer;
 - H.** the insurer has had a rate of growth greater than 20% per year over the last three years, unless other financial indicators are favorable;
 - I.** the insurer has been unprofitable for each of the last three years or has a long-term history of chronic unprofitability, unless the superintendent accepts a valid explanation by the insurer;
 - J.** the insurer has a questionable financial condition for any other reason;
 - K.** the superintendent has reason to believe that the insurer meets the ineligibility standards of Section 59A-14-14.1 NMSA 1978; or
 - L.** the superintendent determines that such action is necessary for protection of the public.
- [13.19.2.14 NMAC, Rp.13.19.2.14 NMAC, 04/21/2026]

13.19.2.15 APPEAL OF SUPERINTENDENT’S ACTION: An unauthorized insurer aggrieved by any action of the superintendent may request a hearing before the superintendent pursuant to Section 59A-4-15 NMSA 1978 et seq.
 [13.19.2.15 NMAC, Rp.13.19.2.15 NMAC, 04/21/2026]

13.19.2.16 NOTICE OF WITHDRAWAL: If the superintendent withdraws eligibility from an eligible surplus lines insurer, the superintendent shall promptly mail notice of such withdrawal to the insurer and to every surplus lines broker. Surplus lines brokers who placed insurance with such insurer shall follow the requirements in 13 NMAC 19.2.10.2 [now Subsection B of 13.19.2.10 NMAC].
 [13.19.2.16 NMAC, Rp.13.19.2.16 NMAC, 04/21/2026]

13.19.2.17 [RESERVED]
 [13.19.2.17 NMAC, Repealed, 04/21/2026]

13.19.2.18 SIGNATURE AND SPECIAL ENDORSEMENT OF SURPLUS LINE POLICY: If the statement required by Section 59A-14-5 NMSA 1978 does not fit on the declarations page of the policy, the superintendent will accept the New Mexico surplus line brokers’ countersignature endorsement prescribed in 13.19.2.22 NMAC on a separate page containing the statement required by statute.
 [13.19.2.18 NMAC, Rp.13.19.2.18 NMAC, 04/21/2026]

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

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

Name of producing broker: _____

Address of producing broker: _____

Being duly sworn, I affirm that:

1. I was engaged to obtain the following policy:

Insurer: _____

Policy number: _____

Type of coverage: _____

Effective date: _____

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

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

or

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

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

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

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

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

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

SIGNATURE

DATE

[13.19.2.19 NMAC, Rp.13.19.2.19 NMAC, 04/21/2026]

13.19.2.20 [RESERVED]

[13.19.2.20 NMAC, Repealed, 04/21/2026]

13.19.2.21 [RESERVED]

[13.19.2.21 NMAC, Repealed, 04/21/2026]

13.19.2.22 SURPLUS LINES BROKERS COUNTERSIGNATURE ENDORSEMENT:

NEW MEXICO SURPLUS LINES BROKER'S COUNTERSIGNATURE ENDORSEMENT

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

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

POLICY NUMBER: _____

NAME OF INSURED: _____

CERTIFICATE NUMBER: _____

DATE POLICY SIGNED: _____

UNDERWRITING COMPANY: _____

Surplus Lines Brokers Signature

[13.19.2.22 NMAC, Rp.13.19.2.22 NMAC, 04/21/2026]

HISTORY OF 13.19.2 NMAC:

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

History of Repealed Material:

13 NMAC 19.2, Writing Surplus Line Business, was repealed effective 12/31/1998 and was repromulgated as 13 NMAC 19.2, Writing Surplus Line Business, effective 1/1/1999.

13 NMAC 19.2 – Writing Surplus Line Business, filed 1/1/1999 was repealed and replaced by 13.19.2 NMAC – Writing Surplus Line Business, effective 04/21/2026,