

13.2.4 NMAC TITLE 13 INSURANCE

CHAPTER 2 INSURANCE COMPANY LICENSING AND OPERATION

PART 4 USE OF COMMERCIAL DEPOSITORIES FOR STATUTORY DEPOSITS

13.2.4.1 ISSUING AGENCY: New Mexico Public Regulation Commission, Insurance Division.

[7/1/97; 13.2.4.1 NMAC - Rn & A, 13 NMAC 2.4.1, 6/14/07]

13.2.4.2 SCOPE: This rule applies to all statutory deposits required in order to be qualified to transact the business of insurance and security deposits required to be registered as a service contract provider in the state of New Mexico.

[7/1/97; 13.2.4.2 NMAC - Rn & A, 13 NMAC 2.4.2, 6/14/07]

13.2.4.3 STATUTORY AUTHORITY: Sections 59A-2-9, 59A-5-18, 59A-5-19, 59A-10-4, 59A-10-5, 59A-14-4 and 59A-58-6 NMSA 1978.

[7/1/97; 13.2.4.3 NMAC - Rn & A, 13 NMAC 2.4.3, 6/14/07]

13.2.4.4 DURATION: Permanent.

[7/1/97; 13.2.4.4 NMAC - Rn, 13 NMAC 2.4.4, 6/14/07]

13.2.4.5 EFFECTIVE DATE: August 24, 1987, unless a later date is cited at the end of a section.

[8/24/87, 12/4/87, 7/1/97; 13.2.4.5 NMAC - Rn & A, 13 NMAC 2.4.5, 6/14/07]

13.2.4.6 OBJECTIVE: The purpose of this rule is to assist insurance companies and service contract providers making statutory deposits with detailed instructions to meet those statutory requirements and to provide rules governing a commercial depository receiving these statutory deposits.

[8/24/87, 12/4/87, 7/1/97; 13.2.4.6 NMAC - Rn & A, 13 NMAC 2.4.6, 6/14/07]

13.2.4.7 DEFINITIONS: Depository means the financial institution designated by the state treasurer and approved by the superintendent to receive and hold deposits required by the Insurance Code.

[7/1/97; 13.2.4.7 NMAC - Rn, 13 NMAC 2.4.7, 6/14/07]

13.2.4.8 SEGREGATION OF DEPOSITS: Each of the following types of deposits shall be separately maintained in the books and records of the depository:

- A. special deposits required under New Mexico law;
- B. special deposits required under the laws of any state other than New Mexico; and
- C. general deposits required under the laws of New Mexico or of any other state.

[8/24/87, 12/4/87, 7/1/97; 13.2.4.8 NMAC - Rn, 13 NMAC 2.4.8, 6/14/07]

13.2.4.9 MANNER OF HOLDING DEPOSITS: All deposit accounts shall be held in the designated depository in the name of the "superintendent of insurance of the state of New Mexico, custodian for (name) insurance company (general/special/other deposit account)". Securities deposited in the account may be held:

- A. in "book entry" form in depository's account with the federal reserve;
- B. in nominee name of depository, depository's corresponding bank, or the clearing corporation retained by depository; or
- C. in the account name specified above.

[8/24/87; 13.2.4.9 NMAC - Rn, 13 NMAC 2.4.9, 6/14/07]

13.2.4.10 SAFEKEEPING RECEIPTS: Safekeeping receipts evidencing the holding of any security at an institution other than the designated depository shall be accepted only with the prior express written approval of the superintendent upon a showing of exceptional circumstances.

[8/24/87; 13.2.4.10 NMAC - Rn, 13 NMAC 2.4.10, 6/14/07]

13.2.4.11 ASSETS ELIGIBLE FOR DEPOSIT: All statutory deposits required by the New Mexico Insurance Code shall be comprised solely of securities which are:

- A. described and permitted by Section 59A-10-3 NMSA 1978 as the same may be amended from time to time, and either:
 - (1) traded on a national securities exchange and for which daily "bid" prices are regularly published and available;
 - (2) public obligations as defined in Section 59A-9-6 NMSA 1978 or
 - (3) certificates of deposit in solvent state and national banks or trust companies whose principal office is located in New Mexico, provided that no deposit shall include certificates of deposit aggregating more than \$100,000 under the valuation method described herein;
- B. all public obligations other than direct obligations of the United States government shall:
 - (1) have a Standard and Poors bond rating of "AA" or greater, a Moody's bond rating of "Aa" or better; or
 - (2) be designated in a current Kinney's information systems preferred bond service as "escrowed to maturity" and "secured in 100% direct U.S. government";
 - (3) all other bonds or other evidences of obligation other than certificates of deposit shall have a Standard and Poors or Moody's bond rating of "A" or better;
 - (4) no security shall be eligible hereunder which shall provide for a scheduled return or partial return of principal prior to maturity.

[8/24/87, 12/4/87; 13.2.4.11 NMAC - Rn, 13 NMAC 2.4.11, 6/14/07]

13.2.4.12 VALUATION OF DEPOSITS: All securities deposited pursuant to the New Mexico Insurance Code shall be valued at their fair market value as of the valuation date.

[8/24/87; 13.2.4.12 NMAC - Rn, 13 NMAC 2.4.12, 6/14/07]

13.2.4.13 RELEASE OF DEPOSITS, OR OF PROCEEDS OR PRINCIPAL OF DEPOSITS: Depository shall not release nor pay to any person any security held as a deposit hereunder, or any proceeds of the sale of, or payments of principal upon, such securities, except upon written direction of the superintendent, or upon order of a court of competent jurisdiction in an action to which the superintendent is a party.

[8/24/87; 13.2.4.13 NMAC - Rn, 13 NMAC 2.4.13, 6/14/07]

13.2.4.14 REPORTING REQUIREMENTS: Depository shall promptly furnish:

A. to the superintendent:

- (1) not later than three (3) days after completion of any transaction with respect to a deposit held by depository hereunder, a report of the transaction in a form approved by the superintendent, except that no report shall be made to the superintendent of a transaction involving solely a receipt of, or payment to insurer of, income on the securities;
- (2) monthly, a security transaction listing and security inventory for each deposit, subtotaled by the deposit account, in a form satisfactory to the superintendent;

B. to the insurer depositing the securities:

- (1) not later than three (3) days after completion of any transaction, a report of the transaction in a form approved by the superintendent;
- (2) not less often than annually, a complete accounting of the securities held and of all transactions which occurred since the latest accounting; and

C. to the superintendent, the state treasurer of the state of New Mexico, and the state auditor of the state of New Mexico, all such other and further reports and records as may be reasonable or necessary for performance of their duties under law.

[8/24/87; 13.2.4.14 NMAC - Rn, 13 NMAC 2.4.14, 6/14/07]

13.2.4.15 COLLATERAL SECURITY: Depository shall promptly furnish to the superintendent evidence of pledge of collateral security in such reasonable form and amount as the superintendent may demand.

[8/24/87; 13.2.4.15 NMAC - Rn, 13 NMAC 2.4.15, 6/14/07]

13.2.4.16 FEES CHARGED BY DEPOSITORY: Total compensation and reimbursement to be received by depository for its services as described in this rule shall be an annual fee not greater than two-tenths of one percent (0.2%) of the face amount of securities held by depository, plus New Mexico gross receipts tax as agreed upon by the superintendent and the state treasurer, or such lesser amount as may be agreed between depository and an individual insurer.

[8/24/87; 13.2.4.16 NMAC - Rn & A, 13 NMAC 2.4.16, 6/14/07]

13.2.4.17 RELATIONSHIP BETWEEN DEPOSITORY AND INSURER OR SERVICE CONTRACT PROVIDER:

- A. Depository may, by agreement between itself and an insurer or service contract provider, accept such other or further additional duties to an insurer or service contract provider as may be agreed between them, provided that no provision of any such agreement shall be effective to impair, diminish or otherwise affect any right or power of the superintendent or the state of New Mexico under this rule or applicable law.
- B. All compensation or reimbursement due to depository shall be the sole liability and responsibility of insurer or service contract provider, and no claim shall be made upon the superintendent or the state of New Mexico, either by depository or by insurer or service contract provider, for collection or payment of any such amounts.

[8/24/87; 13.2.4.17 NMAC - Rn & A, 13 NMAC 2.4.17, 6/14/07]

13.2.4.18 SURETY BONDS IN LIEU OF SPECIAL DEPOSITS: Surety bonds submitted in lieu of special deposits shall be issued by a surety company qualified to transact surety business within the state of New Mexico, provided that such surety company shall not control, be controlled by, or be under common control with the insurer or service contract provider for which the bond is submitted.

[8/24/87; 13.2.4.18 NMAC - Rn & A, 13 NMAC 2.4.18, 6/14/07]

HISTORY OF 13.2.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: INS Rule 80-2, Statutory Deposit Rule, filed 3/27/80. Rule No. SCC-87-2-IN, Insurance Department Regulation 5-1, Use of Commercial Depository's for Statutory Deposits, filed 7/27/87.

History of Repealed Material: [RESERVED]

Other History:

Rule No. SCC-87-2-IN, Insurance Department Regulation 5-1, Use of Commercial Depository's for Statutory Deposits (filed 7/27/87) was renumbered, reformatted, amended and replaced by 13 NMAC 2.4, Use of Commercial Depositories for Statutory Deposits, effective 7/1/97.

13 NMAC 2.4, Use of Commercial Depositories for Statutory Deposits (filed 5/27/97) was renumbered, reformatted, amended and replaced by 13.2.4 NMAC, Use of Commercial Depositories for Statutory Deposits, effective 6/14/07.