

TITLE 41
INSURANCE

CHAPTER 63
OWN RISK AND SOLVENCY ASSESSMENT

41-6301. PURPOSE AND SCOPE. (1) The purpose of this chapter is to provide the requirements for maintaining a risk management framework and completing an own risk and solvency assessment (ORSA) and provide guidance and instructions for filing an ORSA summary report with the director of the state department of insurance.

(2) The requirements of this chapter shall apply to all insurers domiciled in this state unless exempt pursuant to section [41-6306](#), Idaho Code.

(3) The legislature finds and declares that the ORSA summary report will contain confidential and sensitive information related to an insurer's or an insurance group's identification of risks material and relevant to the insurer or insurance group filing the report. This information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. It is the intent of the legislature that the ORSA summary report shall be a confidential document filed with the director, that the ORSA summary report will be shared only as stated herein and to assist in the performance of the director's duties, and that in no event shall the ORSA summary report be subject to public disclosure.

[41-6301, added 2017, ch. 75, sec. 1, p. 188.]

41-6302. DEFINITIONS. For purposes of this chapter:

(1) "Department" means the state department of insurance.

(2) "Director" means the director of the state department of insurance.

(3) "Insurance group" means, for the purpose of conducting an ORSA, those insurers and affiliates included within an insurance holding company system as defined in section [41-3802](#), Idaho Code.

(4) "Insurer" has the same meaning as set forth in section [41-103](#), Idaho Code, and shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state. For purposes of this chapter, the term "insurer" includes, but is not limited to:

(a) An entity holding a certificate of authority under [chapter 3, title 41](#), Idaho Code;

(b) A service corporation holding a certificate of authority under [chapter 34, title 41](#), Idaho Code;

(c) A managed care organization holding a certificate of authority under [chapter 39, title 41](#), Idaho Code; and

(d) The state insurance fund created under [chapter 9, title 72](#), Idaho Code.

(5) "Own risk and solvency assessment" or "ORSA" means a confidential internal assessment, appropriate to the nature, scale and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer's or the insurance group's current business plan, and the sufficiency of capital resources to support those risks.

(6) "ORSA guidance manual" means the current version of the own risk and solvency assessment guidance manual developed and adopted by the national association of insurance commissioners (NAIC) and as amended from time to time and utilizing the version of the manual adopted by the director by rule, administrative order or bulletin.

(7) "ORSA summary report" means a confidential high-level summary of an insurer's or an insurance group's ORSA.

[41-6302, added 2017, ch. 75, sec. 1, p. 188.]

41-6303. RISK MANAGEMENT FRAMEWORK. An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing and reporting on its material and relevant risks. This requirement may be satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

[41-6303, added 2017, ch. 75, sec. 1, p. 189.]

41-6304. ORSA REQUIREMENT. Subject to section [41-6306](#), Idaho Code, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an ORSA consistent with a process comparable to the ORSA guidance manual. The ORSA shall be conducted no less than annually but also at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

[41-6304, added 2017, ch. 75, sec. 1, p. 189.]

41-6305. ORSA SUMMARY REPORT. (1) Upon the director's request, and no more than once each year, an insurer shall submit to the director an ORSA summary report or any combination of reports that together contain the information described in the ORSA guidance manual, applicable to the insurer and/or the insurance group of which the insurer is a member. If the insurer is a member of an insurance group, the insurer shall submit the report(s) required by this subsection if the director is the lead state director of the insurance group as determined by the procedures within the financial analysis handbook adopted by the NAIC and as adopted by the director by rule, administrative order or bulletin.

(2) The report(s) shall include a signature of the insurer's or the insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process attesting to the best of the officer's or executive's belief and knowledge that the insurer applies the enterprise risk management process described in the ORSA summary report and that a copy of the report has been provided to the insurer's board of directors or the appropriate committee thereof.

(3) An insurer may comply with subsection (1) of this section by providing the most recent and substantially similar report(s) provided by the insurer or another member of an insurance group of which the insurer is a member to the director or commissioner of another state or to a supervisor or regulator of a foreign jurisdiction if that report provides information that is comparable to the information described in the ORSA guidance manual. Any such report in a language other than English must be accompanied by a translation of that report into the English language.

[41-6305, added 2017, ch. 75, sec. 1, p. 189.]

41-6306. EXEMPTION. (1) An insurer shall be exempt from the requirements of this chapter if:

(a) The insurer has an annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than five hundred million dollars (\$500,000,000); and

(b) The insurance group of which the insurer is a member has an annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than one billion dollars (\$1,000,000,000).

(2) If an insurer qualifies for exemption pursuant to subsection (1) (a) of this section, but the insurance group of which the insurer is a member does not qualify for exemption pursuant to subsection (1) (b) of this section, then the ORSA summary report that may be required pursuant to section [41-6305](#), Idaho Code, shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one (1) ORSA summary report for any combination of insurers, provided any combination of reports includes every insurer within the insurance group.

(3) If an insurer does not qualify for exemption pursuant to subsection (1) (a) of this section, but the insurance group of which the insurer is a member qualifies for exemption pursuant to subsection (1) (b) of this section, then the only ORSA summary report that may be required pursuant to section [41-6305](#), Idaho Code, shall be the report applicable to that insurer.

(4) An insurer that does not qualify for exemption pursuant to subsection (1) of this section may apply to the director for a waiver from the requirements of this chapter based upon unique circumstances. In deciding whether to grant the insurer's request for a waiver, the director may consider the type and volume of business written, ownership and organizational structure, and any other factor the director considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one (1) state, the director shall coordinate with the lead state director or commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

(5) Notwithstanding the exemptions stated in this section:

(a) The director may require that an insurer maintain a risk management framework, conduct an ORSA and file an ORSA summary report based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests and international supervisor requests.

(b) The director may require that an insurer maintain a risk management framework, conduct an ORSA and file an ORSA summary report if the insurer has risk-based capital for company action level event as set forth in section [41-5403](#), Idaho Code, meets one (1) or more of the standards of an insurer deemed to be in hazardous financial condition as defined in IDAPA 18.01.66, "director's authority for companies deemed to be in hazardous financial condition," or otherwise exhibits qualities of a troubled insurer as determined by the director.

(6) If an insurer that qualifies for an exemption pursuant to subsection (1) of this section subsequently no longer qualifies for that exemption due to changes in premium, as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer shall have one (1) year following the year the threshold is exceeded to comply with the requirements of this chapter.

[41-6306, added 2017, ch. 75, sec. 1, p. 190.]

41-6307. CONTENTS OF ORSA SUMMARY REPORT. (1) The ORSA summary report shall be prepared consistent with the ORSA guidance manual, subject to the requirements of subsection (2) of this section. Documentation and supporting information shall be maintained and made available upon examination or upon request of the director.

(2) The review of the ORSA summary report, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multistate or global insurers and insurance groups.

[41-6307, added 2017, ch. 75, sec. 1, p. 191.]

41-6308. CONFIDENTIALITY. (1) Documents, materials or other information, including the ORSA summary report, in the possession of or control of the department that are obtained by, created by or disclosed to the director or any other person under this chapter are recognized by this state as being proprietary and to contain trade secrets. All such documents, materials or other information shall be confidential by law and privileged, shall not be subject to disclosure pursuant to the public records act, [chapter 1, title 74](#), Idaho Code, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the director is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. The director shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer.

(2) Neither the director nor any person who received documents, materials or other ORSA-related information, through examination or otherwise, while acting under the authority of the director, or with whom such documents, materials or other information are shared pursuant to this chapter, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (1) of this section.

(3) In order to assist in the performance of the director's regulatory duties, the director:

(a) May, upon request, share documents, materials or other ORSA-related information, including the confidential and privileged documents, subject to subsection (1) of this section, with other state, federal and international financial regulatory agencies, including members of any supervisory college as defined in section [41-3815](#), Idaho Code, with the NAIC and with any third-party consultants designated by the director, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related

documents, materials or other information and has verified in writing the legal authority to maintain confidentiality.

(b) May receive documents, materials or other ORSA-related information, including otherwise confidential and privileged documents, materials or information, including proprietary and trade-secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as defined in section [41-3815](#), Idaho Code, and from the NAIC, and shall maintain as confidential or privileged any documents, materials or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

(c) Shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to this chapter, consistent with paragraphs (a) and (b) of this subsection, that shall:

(i) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this chapter, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(ii) Specify that ownership of information shared with the NAIC or a third-party consultant pursuant to this chapter remains with the director and the NAIC's or a third-party consultant's use of the information is subject to the direction of the director;

(iii) Prohibit the NAIC or third-party consultant from storing the information shared pursuant to this chapter in a permanent database after the underlying analysis is completed;

(iv) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this chapter is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure or production;

(v) Require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this chapter; and

(vi) In the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

(4) The sharing of information and documents by the director pursuant to this chapter shall not constitute a delegation of regulatory authority or rulemaking, and the director is solely responsible for the administration, execution and enforcement of the provisions of this chapter.

(5) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials or other ORSA-related information shall occur as a result of disclosure of such ORSA-related information or documents to the director under this section or as a result of sharing as authorized in this chapter.

(6) Documents, materials or other information in the possession or control of the NAIC or third-party consultants pursuant to this chapter shall be confidential by law and privileged, shall not be subject to the public records act, [chapter 1, title 74](#), Idaho Code, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

[41-6308, added 2017, ch. 75, sec. 1, p. 191.]