

**TITLE 1           GENERAL GOVERNMENT ADMINISTRATION**  
**CHAPTER 6       RISK MANAGEMENT**  
**PART 2           PREMIUM RATING FOR CERTAIN RISKS**

**1.6.2.1           ISSUING AGENCY:** General Services Department - Risk Management Division.  
[6/14/1997; 1.6.2.1 NMAC - Rn, 1 NMAC 6.2.1; 9/15/2004]

**1.6.2.2           SCOPE:**

A.       This rule applies to the calculation, assessment and collection of premiums to be charged to all governmental entities self-insured by the risk management division for any of the following coverages for which at least one year's experience exists:

- (1)   general liability, civil rights and personal injury;
- (2)   law enforcement liability;
- (3)   medical malpractice, personal property, health care facility liability;
- (4)   health care personal professional liability;
- (5)   foreign jurisdiction excess coverage, auto liability, and property coverage;
- (6)   workers' compensation; and
- (7)   any other coverages provided through the risk management division except unemployment compensation and employee group benefits coverages.

B.       The director may, in his discretion, make this rule applicable for any coverage year to the calculation of premiums due from governmental entities for any fully or partially commercially-insured line of coverage, where sufficient individual entity experience information exists, provided that the notice provisions of Section 8.1 of this rule [now Subsection A of 1.6.2.8 NMAC] need not be complied with for any such line of coverage.

[6/14/1997; 1.6.2.2 NMAC - Rn, 1 NMAC 6.2.2; 9/15/2004]

**1.6.2.3           STATUTORY AUTHORITY:** This rule is adopted pursuant to:

A.       Section 15-7-2 NMSA 1978 which, among other things, requires the risk management division to apportion state agencies' contributions for insurance and self-insurance coverage;

B.       Section 15-7-3 NMSA 1978 which, among other things, authorizes the risk management division to adopt regulations prescribing the rating basis, assessments and penalties applicable to the public liability fund, the workers' compensation retention fund and the public property reserve fund;

C.       Section 41-4-25 NMSA 1978 which, among other things, authorizes the risk management division to assess a penalty to local public bodies for failure to make timely payment; and

D.       Section 41-4-28 NMSA 1978 which, among other things, requires the director to determine the amount to be assessed by each local public body for foreign jurisdiction liability coverage.

[6/14/1997; 1.6.2.3 NMAC - Rn, 1 NMAC 6.2.3; 9/15/2004]

**1.6.2.4           DURATION:** Permanent.

[6/14/1997; 1.6.2.4 NMAC - Rn, 1 NMAC 6.2.4; 9/15/2004]

**1.6.2.5           EFFECTIVE DATE:** June 14, 1997, unless a later date is cited at the end of a section or paragraph.

[6/14/1997; 1.6.2.5 NMAC - Rn, 1 NMAC 6.2.5; 9/15/2004]

[The language *or paragraph* is no longer correct. Later dates are now cited only in the history notes, shown in brackets, at the end of sections.]

**1.6.2.6           OBJECTIVE:** To prescribe the method of determining total premiums for each line of coverage and to accurately and equitably calculate each covered entity's share of insured or self-insured premium assessments. In addition, to determine the penalty assessment to each covered entity for failure to pay on a timely basis.

[6/14/1997; 1.6.2.6 NMAC - Rn, 1 NMAC 6.2.6; 9/15/2004]

**1.6.2.7           DEFINITIONS:** As used in this rule:

A.       **"agency"** or **"state agency"** means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions;

B. **“average occupied beds”** means the daily average number of beds occupied in a health care facility during a one-year period, as determined by the risk management division; provided that, for nursing homes, five average occupied beds shall be equivalent to one average occupied bed in any other health care facility;

C. **“director”** means the director of the RMD;

D. **“experience”** means the amount of money paid and the amount of money reserved to pay claims against an insured, including amounts paid and reserved for adjustment, defense and liability, for claims incurred during a specified period of time;

E. **“exposure”** means a measure of the extent of an insured’s risk of loss, disregarding experience. For example, exposure is frequently measured in terms of units based on capitation (e.g., a charge for each employee or student, or a charge by population) or budget;

F. **“full-time equivalent”** means the total number of weekly regular hours budgeted for part-time and full-time employees of a particular class, divided by forty;

G. **“local public body”** means all political subdivisions of the state and their agencies, instrumentalities and institutions;

H. **“RMD”** means the risk management division of the general services department; and

I. **“total operating budget”** means the total budget for an individual entity for the current or other recent year, excluding capital expenditures.

[6/14/1997; 1.6.2.7 NMAC - Rn, 1 NMAC 6.2.7; 9/15/2004]

#### **1.6.2.8 ANNUAL PREMIUM NOTICE, PREMIUM DUE DATE:**

A. The RMD shall notify each governmental entity annually of the premiums due for each line of coverage provided by or through the division. Wherever applicable, the RMD shall attempt to mail the premium notice at least three months prior to the annual premium due date, or, if premiums are due more often than annually, at least three months prior to the first date any portion of the premium is due. Failure to provide or receive notice, or the existence of any inaccuracy in any notice, shall not relieve the governmental entity of the obligation to pay any premium. RMD may satisfy this notice provision as to state agencies by giving notice of their premiums to the state budget division of the department of finance and administration.

B. Premiums shall be payable to the RMD on the dates and in the manner the director establishes. Premiums are due and payable within sixty days (Saturdays, Sundays and holidays included) of the billing date, and are overdue thereafter. The RMD shall mail premium billings to each governmental entity at least sixty days before premiums are due. Such billings shall be in addition to any premium notice provided pursuant to Section 8.1 [now Subsection A of 1.6.2.8 NMAC].

C. Premiums not timely paid shall be subject to a late charge of not to exceed one and one-half percent (1.5 percent) per month of the unpaid balance. This late charge is in addition to and is cumulative with any other penalties which the RMD is authorized to impose by law. The director shall establish the percentage rate of the late charge at least annually, with the advice of the risk management advisory board.

D. The director, in his discretion, for good cause shown, may waive premiums and/or late charges for an entity that has insufficient funds for reasons beyond the control of the affected entity. The director in his discretion and after making diligent efforts administratively to collect, may write off premiums or late charges which he considers to be uncollectible. Good cause does not include unavailability of sufficient funds because of the entity’s failure to request and/or budget sufficient funds in accordance with the notice provided pursuant to Section 8.1 [now Subsection A of 1.6.2.8 NMAC].

E. The director, in his discretion, may impose a higher deductible against a claim made by a governmental entity which has premiums or late charges (up to or overdue amount) that are more than sixty days overdue.

[6/14/1997; 1.6.2.8 NMAC - Rn, 1 NMAC 6.2.8; 9/15/2004]

#### **1.6.2.9 TOTAL PREMIUM DEVELOPMENT:**

A. At least one month prior to the date of the annual premium notice, the RMD shall develop total premiums for each line of coverage to which this rule applies. A total premium shall be developed separately for different risk groups determined by the director.

B. The total premiums for a given line of coverage for a particular risk group shall be the annual average total experience for that risk group and line of coverage for the five most recent consecutive coverage years, disregarding the current year; provided that the director may, in his discretion, increase or decrease the total premium so calculated for any risk group and line of coverage by an amount not to exceed forty percent (40 percent).

C. In developing any total premium, the director may disregard or treat separately any particular experience which he feels would distort the experience as a whole of the risk group.

D. After developing total annual premium, the director shall determine what portion of premium for each risk group for each line of coverage shall be collected through exposure rating and what portion, if any, through experience rating. Lines of coverage with less than \$200,000 total annual premium or which experience smaller numbers of claims may, in the director's discretion, be rated solely on exposure.  
[6/14/1997; 1.6.2.9 NMAC - Rn, 1 NMAC 6.2.9; 9/15/2004]

#### **1.6.2.10 DETERMINATION OF EXPOSURE/EXPERIENCE PREMIUMS:**

A. Prior to the annual notice required pursuant to Section 4 of this rule [now Subsection A of 1.6.2.8 NMAC], the RMD shall calculate for each covered entity the annual premium for each line of coverage. Such premiums shall consist of an exposure-rated component and if applicable, in accordance with this rule, an experience-rated component.

B. The annual premium for an individual entity for a given line of coverage shall be calculated according to the following formula:

**Entity Premium = IEP + IXP**, where IEP and IXP are, respectively, the individual entity's exposure premium component and experience premium component. IXP may be zero or not applicable to any particular risk group or to any given line of coverage, in the director's discretion. The director may, in his discretion, prescribe a minimum premium for any risk group or line of coverage, and, where applicable, such minimum premium shall be charged to the entity if greater than the entity premium calculated according to this subsection. The director may exempt from payment entities having a premium of \$50.00 or less. Entities having less than three full calendar year's experience shall be charged on a 100 percent exposure basis, regardless of the fact that other entities in the same risk group are paying on the basis of exposure and experience for a given line of coverage.

C. The exposure-rated premium component for each individual entity for each line of coverage, other than entities rated on a 100 percent exposure basis pursuant to Section 6.2 of this rule [now Subsection B of 1.6.2.10 NMAC], shall be calculated according to the following formula:

$$\text{IEP} = \text{TEP} \times \frac{\text{IEU}}{\text{TEU}}$$

where:

- (1) IEP is an individual entity's exposure premium component for a given line of coverage;
- (2) TEP is the total exposure premium for that line of coverage for the risk group of which the individual entity is a part;
- (3) IEU is the number of exposure units of the kind set forth in table 1 for the individual entity for that line of coverage;
- (4) TEU is the total number of exposure units for all entities in that risk group for that line of coverage.

D. Exposure units for specified risk groups for each line of coverage shall be as established by the RMD policy and shall be identified as table 1.

E. The experience-rated premium component, if any, for each individual entity shall be calculated according to the following formula:

$$\text{IXP} = \text{TXP} \times \frac{\text{IL}}{\text{TL}}$$

where:

- (1) IXP is an individual entity's experience premium component for a given line of coverage;
- (2) TXP is the total experience premium for that line of coverage for the risk group of which the individual entity is a part;
- (3) IL is the individual entity's ratable losses for the line of coverage; and
- (4) TL is the total ratable losses for that risk group for that line of coverage.

F. Ratable losses for a given line of coverage for an individual entity shall be the experience for that entity for that line of coverage during the five most recent consecutive fiscal years, including the current partial year; subject to a loss limit per claim of up to five per cent (5 percent) of the entity's total operating budget, but in no case shall such loss be limited to less than \$2,500 per claim or no more than \$1,000,000. The director of the RMD shall set the percentage loss limitation annually and the same percentage shall apply to all individual entities within a group of entities for the line of business involved.

[6/14/1997; 1.6.2.10 NMAC - Rn, 1 NMAC 6.2.10; 9/15/2004]

[Current citations have been added as annotations for the internal references contained in Subsections A and C of this section; however, those references appear to be carried forward incorrectly from earlier versions of the rule, and the current citations provided are based strictly on a reading of the content and could be in error. Also, there is no clear point of reference to the *table 1* cited in Subsections C and D in the rule as filed.]

**1.6.2.11 SPECIAL PREMIUMS, EXCEPTION:**

A. The director may augment or decrease any entity premium calculated in accordance with this rule upon his written finding that:

- (1) the risk to be covered involves a degree or type of hazard not contemplated by the existing coverage; or
- (2) the premium developed in accordance with this rule does not produce a premium corresponding to the risk; or
- (3) an entity's individual exposures or experience accounts for 35 percent or more of the total for a given line of coverage.

B. The director shall state in writing the premium he deems appropriate to cover the risk, giving the justification of the amount.

C. The director shall notify in writing the entity which he proposes to charge a special premium pursuant to this section, setting forth his findings, the proposed premium and his justification thereof. The entity shall have thirty days after mailing of such notice to respond in writing to the director. If the entity makes no timely response to the director's notice, the premium shall become effective thirty days after mailing of the notice. If the entity makes a timely response, the director shall review the entity's response with the risk management advisory board in open meeting at which the entity shall have the right to appear and be heard. Thereafter, the premium or any modification shall become effective upon the director's written notice to the entity.

[6/14/1997; 1.6.2.11 NMAC - Rn, 1 NMAC 6.2.11; 9/15/2004]

**1.6.2.12 OPTIONAL COVERAGES - EXCEPTION:** This rule shall apply only to coverages that the RMD is mandated to provide. The rule does not apply to those coverages that the RMD may provide on an optional basis, and that [a] government entity has the right to accept or reject. The director shall use these guidelines on optional coverages if it appears that there are enough governmental entities involved, and if it appears that they will be with the RMD for reasonable lengths of time. The director will outline, in writing annually, the rate structure that is to be used for optional coverages.

[6/14/1997; 1.6.2.12 NMAC - Rn, 1 NMAC 6.2.12; 9/15/2004]

**1.6.2.13 DEDUCTIBLES:** If a deductible is added or increased, the master rating sheet for all agencies combined shall reflect the credit given. If a deductible is eliminated or reduced, the master rating sheet for all agencies combined shall show the additional charge.

[6/14/1997; 1.6.2.13 NMAC - Rn, 1 NMAC 6.2.13; 9/15/2004]

**1.6.2.14 BOARD REVIEW OF PREMIUM RATING PLAN:** The RMD shall seek the advice of the risk management advisory board at least annually with regard to any premium rating plan established pursuant to this rule.

[6/14/1997; 1.6.2.14 NMAC - Rn, 1 NMAC 6.2.14; 9/15/2004]

**1.6.2.15 INTERIM RATING PROVISION:** In the event that the computer program cannot be finalized in time to develop the budget for FY 99 to meet DFA budget guidelines, the director may develop FY 99 premium based on a percentage increase or decrease from FY 98 premium in each line of business. Section 11[now 1.6.2.11 NMAC] will still apply to this interim provision.

[6/14/1997; 1.6.2.15 NMAC - Rn, 1 NMAC 6.2.15; 9/15/2004]

[The agency has not amended the part to delete this temporary provision.]

**History of 1.6.2 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the state records center and archives under: DFA Rule 83-1, Relating to Premium Rating for Certain Risks Covered Through Risk Management Division, filed 12-28-82; GSD Rule 84-702, Premium Rating for Certain Risks Covered through Risk Management Division, filed 04-04-84; and GSD Rule 86-702, Premium Rating for Certain Risks Covered Through Risk Management Division, filed 06-30-86.

**History of Repealed Material:** [Reserved]

**Other History:**

GSD Rule 86-702, Premium Rating for Certain Risks Covered Through Risk Management Division (filed 06-30-86) was reformatted, renumbered, and replaced by 1 NMAC 6.2, Premium Rating for Certain Risks, effective 6/14/97. 1 NMAC 6.2, Premium Rating for Certain Risks (filed 6/02/97) was renumbered and reformatted to 1.6.4 NMAC, Premium Rating for Certain Risks, to comply with the current NMAC requirements, effective 9/15/2004.