

This rule was filed as 13 NMAC 8.5.

TITLE 13 INSURANCE
CHAPTER 8 INSURANCE POLICIES AND RATES
PART 5 RATE MODIFICATION PLANS

13.8.5.1 ISSUING AGENCY: New Mexico State Corporation Commission [Public Regulation Commission], Department of Insurance, P.O. Box 1269, Santa Fe, New Mexico, 87504-1269.
[2/1/95; Recompiled 11/30/01]

13.8.5.2 SCOPE:

A. This rule applies to authorized property and casualty insurers and rate service organizations that file rates, loss costs or supplementary information with the department.

B. This rule applies only to those classes of insurance (monoline or packaged) commonly known as commercial vehicle, commercial general liability, professional liability, commercial property, worker's compensation and contract surety bonds.

C. This rule does not apply to boiler and machinery insurance.
[4/1/97; Recompiled 11/30/01]

13.8.5.3 STATUTORY AUTHORITY: Sections 59A-2-9, 59A-3-6, 59A-17-5, 59A-17-16, 59A-17-17, 59A-17-28, 59A-17-29 and 59A-32-13 NMSA 1978.
[2/1/95; Recompiled 11/30/01]

13.8.5.4 DURATION: Permanent.
[4/1/97; Recompiled 11/30/01]

13.8.5.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective April 1, 1997.
[2/1/95, 4/1/97; Recompiled 11/30/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

13.8.5.6 OBJECTIVE: The purpose of this rule is to establish criteria for the modification of manual rates through the application of insurer rate modification plans and experience rating plans and the reporting of pertinent information concerning the utilization of such plans in order to determine whether rates developed thereunder meet the standards of the rating law. Such information may also be utilized to assist in monitoring competition in accordance with Section 59A-17-3(A)(2) NMSA 1978.
[2/1/95; Recompiled 11/30/01]

13.8.5.7 DEFINITIONS:

A. **"Consent to rate"** means a deviation from the manual rate agreed to by both the insured and insurer.

B. **"Experience rating plan"** means any rating plan or system whereby a manual rate for insurance is adjusted or modified based on the past loss experience of the insured.

C. **"Manual rate"** means a rate, whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit and variations based on loss or expense considerations, designed to apply on a generic basis to similar risks within the same market, filed by an insurer or rate service organization with the department, approved by the superintendent, and made part of the rating manual used by an insurer or rate service organization.

D. **"Rate modification plan"** means a rating plan or procedure, exclusive of experience rating, which provides a listing of various risk characteristics or conditions and a range of modification factors which may be applied for those characteristics or conditions to the manual rate of a particular insurance risk. The effect of the modification factor is to increase (debit) or decrease (credit) the manual rate. Rate modification plans include, but are not limited to, plans commonly referred to as schedule rating plans and individual risk premium modification plans.

[2/1/95; Recompiled 11/30/01]

13.8.5.8 STANDARDS FOR RATE MODIFICATION PLANS: Rate modification plans shall comply with the following standards:

A. Rate modification plans may only be used to acknowledge variance in risk or expense characteristics.

B. Rate modification plans may be based only on rating characteristics not already reflected in the manual rates or experience rating plan. Rate modification plans must clearly indicate the objective criteria to be used.

C. Individual underwriting files must contain specific criteria and document particular circumstances of the risk in support of each debit or credit. Such documentation must be maintained in the file to enable the superintendent to verify compliance with this rule. Documentation may include, but is not limited to inspection reports, photographs, agent observations and findings, insured formal safety plans, premises evaluations and narrative reports covering other aspects of the risk. Expenses such as reduced commissions may be considered but must be documented in the underwriting file.

D. Any rate modification plan designed to be applied simultaneously to property, liability, or vehicle coverage shall contain reasonable factors that give appropriate recognition to the distinct exposures involved in such coverage.

E. Once a rate modification plan has been filed and approved, its use by the insurer is mandatory. The rate modification plan must be applied uniformly in a non-discriminatory manner for all eligible classes of risk even if the application of the rate modification plan results in a "1.0" modification or no change in a previous modification applied.

F. The application of any rate modification plan shall not result in debits or credits that exceed 25 percent for the commercial vehicle, commercial general liability and commercial property lines of business. The application of any rate modification plan shall not result in debits or credits that exceed 15 percent for the workers' compensation line of business. Modifications generated by loss experience or company expense experience are not subject to this limitation. Professional liability, contract surety bonds, and directors and officers liability are not subject to this limitation.

G. Once a rate modification plan has been applied to a risk and a credit or debit established, no changes in the credit or debit can be made without appropriate justification and documentation.

H. Any rate modification plan must provide that an applicant will be notified in writing by the insurer at the issuance of a new policy of the factors and resulting amounts which resulted in the rating modification, whether a debit or credit, so that, among other things, the applicant will be fairly apprised of any corrective action that might be appropriate with respect to the insurance risk. The insured must also be notified in writing by the insurer at the issuance of a renewal policy of either the removal of credits or the addition of debits in the rating modification and the reasons therefor.

[2/1/95, 4/1/97; Recompiled 11/30/01]

13.8.5.9 CONSENT TO RATE:

A. Upon written application of an insured stating the reasons therefor, filed with the superintendent on a form to be prescribed by the superintendent, and upon approval of the application by the superintendent, an insurer may charge a rate in excess of that otherwise applicable to a specific risk.

B. The insurer shall pay the filing fees specified in Section 59A-6-1 NMSA 1978.

[2/1/95; Recompiled 11/30/01]

13.8.5.10 EXPERIENCE RATING PLANS: Experience rating plans shall comply with the following standards:

A. Premium and loss figures used in the calculation of experience rating plan rates must be verifiable and justifiable. Loss figures shall fairly reflect the expected value of salvage, subrogation, subsequent injury fund recoveries and other recoveries, whether paid or unpaid.

B. Underwriting files must document the basis of the experience rating in sufficient detail so that the superintendent can verify compliance with this rule.

C. Once an insurer or rate service organization has filed an experience rating plan, its use is mandatory. The experience rating plan must be applied uniformly in a non-discriminatory manner for all eligible

classes of risk even if the application of the experience rating plan results in a “1.0” experience modification or no change in a previously applied experience modification.

D. An experience rating plan must provide that an applicant will be notified in writing by the insurer at the issuance of a new policy of the experience rating modification, whether a debit or credit. The insured must also be notified in writing by the insurer at the issuance of a renewal policy of any changes in the experience rating modification. In the case of contingent, temporary, or provisional experience rating modifications, notice should be provided within 30 days of modification to premium.

[2/1/95, 4/1/97; Recompiled 11/30/01]

13.8.5.11 REPORTING PERTINENT INFORMATION:

A. At the request of the superintendent, an insurer authorized to write any insurance in this state to which this rule applies shall submit data to the superintendent establishing the relationship of aggregated premiums actually charged to policyholders by the insurer for each line of commercial insurance to the aggregate premium that would have been produced by the insurers’ filed unmodified rates for that line of commercial insurance. A rate service organization may file the data on behalf of the insurer.

B. The rate modification plan filed by the national council of compensation insurance shall be for workers’ compensation insurance. The national council of compensation insurance shall perform an independent audit of insurer records to verify accurate recording at the policy level and tabulation of total debits and credits. The national council of compensation insurance shall annually submit data to the superintendent establishing the relationship of aggregated premiums actually charged to policyholders by insurers for workers’ compensation insurance to the aggregate premium that would have been produced by the insurers’ filed unmodified rates.

[2/1/95; Recompiled 11/30/01]

13.8.5.12 RATE COMPLIANCE EXAMINATIONS: To determine compliance with this rule, the superintendent may order a rate compliance examination be made of any insurer to which this rule applies.

[2/1/95; Recompiled 11/30/01]

13.8.5.13 PENALTIES: Any insurer that fails to comply with the provisions of this rule shall be subject to the penalties or sanctions provided in the Insurance Code.

[2/1/95; Recompiled 11/30/01]

13.8.5.14 TRANSITION:

A. Any new insurance program to which this rule is applicable, instituted on or after the effective date of this rule, must meet all requirements of this rule.

B. Insurers must use only filed and approved programs. Insurers currently offering insurance programs to which this rule is applicable shall file revised rate modification plans, experience rating plans, and revised base rates to minimize the impact on policyholders, if necessary, to meet the requirements of this rule. Workers’ compensation filings should be made at least 90 days in advance of the effective date of this rule. All other applicable insurance programs should be filed at least 60 days in advance of the effective date of this rule.

[2/1/95, 4/1/97; Recompiled 11/30/01]

HISTORY OF 13.8.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SCC 94-05-IN, Rate Modification Plan Rule, filed 12/30/94.

History of Repealed Material: [RESERVED]