

CHAPTER 45-05-06
RISK MODIFICATION PLAN REGULATION

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45-05-06-01. Scope. This chapter applies to all commercial lines of insurance (including farmowners) except those excepted risks described in North Dakota Century Code section 26.1-30.1-01 and for plans such as Automobile Insurance Plan Services Office (AIPSO), Market Assistance Plan (MAP), Joint Underwriting Association (JUA), North Dakota Insurance Reserve Fund (NDRF), and state property insurance plan (FAIR plans) are exempt from this regulation.

History: Effective October 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-25, 26.1-30-19

45-05-06-02. Definitions.

1. "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.
2. "Manual rate" means a rate, designed to apply on a generic basis to similar risks within the same class, filed by an insurer or rating organization with the department of insurance and made part of the rating manual used by an insurer or rating organization.
3. "Rate modification plan" means a rating plan or procedure which provides a listing of various risk characteristics or conditions and a range of modification factors which may be applied for these 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 called schedule rating plans and individual risk premium modification plans.

History: Effective October 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-25, 26.1-30-19

45-05-06-03. Rate modification plans. Rate modification plans, justified according to the standards herein, are allowed by the insurance code. However, the commissioner has determined that the use of unjustified rate modification plans is not reasonable, is not objective, and is unfairly discriminatory. Therefore, the use of unjustified rate modification plans in rating of commercial property and casualty insurance risks located in North Dakota is prohibited.

The following elements must be considered in determining whether or not a rate modification plan, or its use, is justified:

1. Rate modification plans must be used to acknowledge variance in risk characteristics and not merely to gain competitive advantage or for any other purpose.
2. Rate modification plans must be based only on rating characteristics not already reflected in the manual rates. The plans must clearly indicate the objective criteria to be used.
3. Individual underwriting files must contain the specific criteria and document the particular circumstances of the risk that support each debit or credit. This documentation must exist in the individually rated risk file to enable the commissioner to verify compliance with this chapter. Documentation may include, but is not limited to, inspection reports, photographs, agent observations and findings, insured's formal safety plans, premises evaluations, and narrative reports covering other aspects of the risk. Intentional or willful misclassification of a risk constitutes a modification without justification.
4. Any rate modification plan designed to be applied simultaneously to property, liability, or vehicle coverage must contain reasonable factors that give appropriate recognition to the distinct exposures involved in such coverages.
5. Once a company has filed a rate modification plan, its use is mandatory. The plan must be applied uniformly in a nondiscriminatory manner for all eligible classes of risk.
6. The application of any rate modification plan may not result in debits or credits that exceed twenty-five percent. Modifications generated by experience rating plans or based upon company expense experience are not subject to this limitation.
7. Once a rate modification plan has been applied to a risk and a credit or debit established, no change in the established credit or debit can be made without appropriate justification and documentation.
8. Any rate modification plan must provide that when a risk is rated below average (debited) an insured or applicant, upon request, will be advised by the insurer of the factors which resulted in the adverse rating so that

the insured or applicant will be fairly apprised of any corrective action that might be appropriate with respect to the insurance risk.

History: Effective October 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-25, 26.1-30-19

45-05-06-04. Experience rating plans. Exposure, premium, and loss figures used in the calculation of experience rating plans must be verifiable and justifiable.

History: Effective October 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-25, 26.1-30-19

45-05-06-05. Reporting of pertinent information. Upon the request of the commissioner, an insurer authorized to write any insurance in this state to which this chapter applies shall submit to the commissioner the number of policies by line issued with rate modification as defined in subsection 3 of section 45-05-07-02 and the proportion of policies so issued to all policies written by line by the company. A rating organization may file the data on behalf of the insurer.

History: Effective October 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-25, 26.1-30-19

45-05-06-06. Rate compliance examinations. To determine compliance with this chapter the commissioner may order a rate compliance examination be made of any insurer to which this chapter applies. Any examination must be conducted pursuant to North Dakota Century Code chapter 26.1-03.

History: Effective October 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-25, 26.1-30-19

45-05-06-07. Filing of rate modification plans. Within one hundred eighty days of October 1, 1989, each insurer to which this chapter applies shall refile its rate modification plans in accordance with the provisions of this chapter. At the end of the one hundred eighty-day period all prior rate modification plans filed with the department of insurance will be considered obsolete. Subsequent changes in any insurer's rate modification plan will not be considered to be filed with the commissioner unless the complete plan, as modified, is submitted.

History: Effective October 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-25, 26.1-30-19

45-05-06-08. Separability. If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the

remainder of the chapter and the application of such provision shall not be affected thereby.

History: Effective October 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-25, 26.1-30-19

45-05-06-09. Dissemination. Each insurer or rating organization is instructed to distribute a copy of this chapter to all personnel engaged in activities requiring knowledge of this chapter, and to instruct them as to its scope and operation.

History: Effective October 1, 1989.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-25, 26.1-30-19