

**Readopt with amendment Ins 1406, effective 1-25-21 (Document #13162), to read as follows:****PART Ins 1406 PLAN OF OPERATION FOR THE NEW HAMPSHIRE AUTOMOBILE REINSURANCE FACILITY**

Ins 1406.01 Purpose. The purpose of this part is:

(a) To make automobile insurance readily available to citizens of the state of New Hampshire at rates and premiums which are adequate, reasonable, and non-discriminatory by approving and promulgating the plan of operation for the New Hampshire automobile reinsurance facility plan, hereinafter “facility”;

(b) To specify the basis of participation of insurers and producers therein and the conditions under which eligible risks which are equitably entitled but otherwise unable to obtain automobile insurance covering private passenger automobiles shall be accepted by such insurers and producers; and

(c) To provide a comprehensive set of definitions and requirements applicable solely to personal automobile insurance risks eligible for and ceded to the facility.

Ins 1406.02 Definitions.

(a) “Automobile insurance” means primary insurance, including non-owned vehicle only policies, against bodily injury or property damage, including legal liability, arising out of the ownership, operation, maintenance, or use of motor vehicle(s). The term includes medical payments insurance, physical damage insurance, uninsured motorists insurance, and other related insurance coverage arising out of the ownership, operation, maintenance, or use of motor vehicle(s), but does not include umbrella or excess coverage.

(b) “Car year” means one vehicle insured for one 12-month period.

(c) “Chargeable accident” means, for purposes of placement to the facility and as defined in a facility rate manual, an at-fault occurrence that results in bodily injury in excess of \$750.00, death or property damage in excess of \$1,500.00, but does not include an occurrence involving only bodily injury or property damage to the applicant or any operator of the automobile currently a resident in the same household, unless the said applicant or operator is convicted of a moving motor vehicle violation in connection with the occurrence.

(d) “Commission allowance” means actual commissions paid to producers or other expenses incurred in lieu of producers' commission.

(e) “Commissioner” means the commissioner of insurance.

(f) “Continuation premium” means the premium that is periodically paid to maintain in-force a policy that is written on a continuous basis.

(g) “Continuous basis” means a policy written on a condition indicating that such policy will be continued, renewed, or considered in-force if the required premium is paid to or received by the insurer on or before a specified date or a policy written on a continuous-until-cancelled basis.

(h) “Continuous-until-cancelled” means a policy issued with no fixed expiration date that remains in-force until cancelled.

(i) “Eligible risk” means a person who *is a resident of New Hampshire when the policy is issued or renewed or the person’s vehicle that is to be insured is principally garaged in New Hampshire when the policy is issued or renewed* [~~has signed a residency statement pursuant to RSA 417-A:3-b and Ins 1406.01 and who~~] *and, in either case, the person* has at least one safe driver incentive plan (SDIP) point.

(j) “Experience period” means the 3 years immediately preceding the effective date of the policy.

(k) “Facility” means the New Hampshire automobile reinsurance facility.

(l) “Facility gross premium” means gross base premium.

(m) “Fleet” means 5 or more motor vehicles of any type.

(n) “Gross base premium” means premium charged to the insured before the application of any SDIP surcharge.

(o) “Licensed driver” means any person with an authorized driver’s license or any other license or permit to drive a vehicle issued under the laws of this state, including any temporary or learner’s permit.

(p) “Member” means an insurer authorized to write automobile insurance in the state of New Hampshire.

(q) “Motor vehicle” means any of the following vehicles~~[-, whether owned, leased for a contract period of at least 6 months, or not owned by the insured, so long as the vehicle is not one that is used as a public livery conveyance for passengers, rented to the insured with a driver, furnished to an insured for regular use, or used without express or implied consent of the owner]:~~

(1) An automobile;

(2) A pick-up *truck* ~~[body],[a] panel truck, or similar type vehicle [not customarily used in the occupation, profession, or business of the insured other than farming];~~

(3) Motorcycle, motorbike, motorscooter, or similar 2-wheel or 3-wheel vehicle;

(4) Off highway recreational vehicles which are registerable under RSA 215-A; or

(5) Motorhomes, meaning a self-propelled motor vehicle with a living area that is an integral part of the vehicle chassis or a pickup with a permanently attached camper body in which the living area or camper body consists of facilities for cooking and sleeping.

(r) “New Hampshire automobile reinsurance facility” means the mandatory risk sharing plan, established pursuant to RSA 404-C:1, to provide a market mechanism for personal automobile insurance for eligible risks.

(s) “Person” means any natural person, spouse, family member, or any individual with express or implied consent to use a motor vehicle.

(t) “Policy of automobile insurance” means a policy issued with respect to any motor vehicle registered or principally garaged in this state, insuring a person as named insured, or one or more related individuals resident of the same household, and under which the insured vehicles therein designated includes a private passenger automobile.

(u) “Policy period” means:

(1) That period of time set forth in the policy itself during which the policy is to remain in effect; or

(2) Twelve months if the policy contains no fixed expiration date or if the policy provides for a policy period of less than 12 months in duration.

(v) "Private passenger automobile" means any motor vehicle as defined in (q) above *written for personal, family, or household use that is intended for non-commercial coverage.*

(w) "Renewal" means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer and having the types and limits of coverage at least equal to those contained in the policy being superseded.

(x) "Replacement policy" means a policy that a company issues to replace a voluntary policy for the purpose of ceding the insured to the facility.

(y) "Resident"~~[:]~~ *means a person who is domiciled in the state of New Hampshire and who, through all of his or her actions, has demonstrated a current intent to designate this state as his or her true, fixed, and permanent residence to the exclusion of all others. Resident status shall not be lost by a temporary absence from this state, including but not limited to travel and military service, if there is an intent to return to this state as the person's true, fixed, and permanent residence to the exclusion of all other.*

~~{(1) A person who maintains his or her true, fixed, and permanent residence within the state of New Hampshire and does not claim residency in any other state for any purpose and who has, through all of his or her actions, demonstrated a current intent to designate that the permanent residence is his or her principal place of physical presence for the indefinite future, to the exclusion of all others; or~~

~~(2) A person who is without a permanent street address due to homelessness or a person who is temporarily without a permanent street address due to traveling outside of the state of New Hampshire in a recreational vehicle for a period not to exceed 2 years and who has met and can demonstrate the requirements of RSA 261:52 b or RSA 261:52 c.}~~

(z) "Safe Driver Incentive Plan (SDIP)" means the surcharge rating plan used with all policies to develop the surcharge portion of the total policy premium.

(aa) "Total policy premium" means the sum of all premiums for all liability and physical damage coverages.

Ins 1406.03 Insurers Required to Participate. All insurers authorized to write automobile insurance in this state and all producers licensed to represent such insurers for automobile insurance in this state shall participate in the facility.

Ins 1406.04 Basis of Participation.

(a) All insurers authorized to write automobile insurance in this state shall issue to any eligible risk a policy of automobile insurance covering private passenger automobiles. The policy shall be of the type afforded by such insurer to the public, and utilizing the premium payment plans, rules, and classification systems then in effect for such insurer, and shall provide the coverages and coverage limits as requested by the insured. However, any policy ceded to the facility shall be charged the approved facility rate and no insurer shall be required to afford coverages or coverage limits in excess of those coverages and coverage limits offered by the facility. Each member of a group of affiliated insurers shall not be considered a separate insurer for purposes of this section.

(b) No producer appointed to represent an insurer shall refuse to furnish to any eligible risk a quotation of premium for automobile insurance covering private passenger automobiles.

(c) If the risk accepts the quotation, the producer shall promptly submit the application to the insurer and shall exercise whatever binding authority is normally available from that insurer.

(d) If the risk accepts the quotation but it is not within the producer's binding authority, the producer shall promptly submit the application to the insurer and, unless a later effective date is requested by the insured, the coverage shall be bound and effective at 12:01 A.M. on the date following the date of mailing of the application to the insurer as shown by the postmark on the transmittal envelope. If the postmark is not legible, the coverage shall be effective at 12:01 A.M. on the day following receipt of the application by the insurer.

Ins 1406.05 Evidence of Financial Responsibility. The insurer shall protect the driving privileges of its insureds to be licensed to operate a motor vehicle in the state of New Hampshire. Therefore, upon notice to the insurer that it has become necessary for an insured to file evidence of financial responsibility with the state of New Hampshire, the insurer or producer covering the risk shall provide the insured with evidence of financial responsibility as soon as the insurer or producer becomes aware of the requirement or upon request of the insured.

Ins 1406.06 Obligation of Members.

(a) Every member shall be bound by the plan of operation of the facility.

(b) Any member whose membership in the facility terminates, nevertheless shall continue to be bound by the plan of operation of the facility with respect to its obligations incurred during its membership.

(c) Any unsatisfied net liability to the facility of any insolvent member shall be assumed by and apportioned among the remaining members in the facility in the manner provided in Ins 1405.13. The facility shall have all rights allowed by law on behalf of the remaining members against the estate or funds of such insolvent member for sums due the facility.

(d) When a member has been merged or consolidated into another insurer, or another insurer has reinsured a member's entire New Hampshire automobile insurance business, such member and its successors in interest and such other insurer shall be liable for such member's obligations hereunder.

(e) To ensure the efficient and equitable operation of the facility, the individual members shall not be held liable for any judgment against the facility pursuant to the provisions of RSA 404-C:2, III.

Ins 1406.07 Board of Governors.

(a) The commissioner shall appoint a board of governors, hereinafter "board", composed of 12 representatives and nominated as follows:

(1) The merger of the American Insurance Association (AIA) and the Property Casualty Insurers Association of America (PCI) resulted in the formation of the American Property Casualty Insurance Association (APCIA) which shall nominate 4 members;

(2) Insurers which are not members of the organizations enumerated in (1) above shall nominate 2 members;

(3) The 6 members nominated according to (1) and (2) above shall nominate 2 at-large members;

(4) The commissioner shall select one consumer not a member of any of the organizations enumerated in subparagraphs (1) through (3) above;

(5) The commissioner shall select one member who is an employee of the insurance department; and

(6) The commissioner shall select 2 licensed New Hampshire insurance producers.

(b) Not more than one member in a group of companies under common management or control shall be represented on the board at the same time.

(c) The names of the nominees as selected in accordance with (a) above shall be placed in nomination before the commissioner prior to the completion of the terms of the appointees that the nominees are replacing.

(d) Each board representative shall serve for a term of 2 years but may serve succeeding terms if subsequently designated to serve the additional term in the manner provided herein for the initial designation.

(e) All board representatives shall serve until their successors are designated. Any vacancy on the board, by resignation of a representative or otherwise, shall be filled in the manner provided herein for initial designation, but the designee shall serve only for the unexpired portion of the term for which the representative is designated, unless such representative is subsequently appropriately designated to serve an additional term or terms.

(f) Actions of the board shall be binding when voted by a majority of those eligible to vote who are present and voting, and no vote may be taken unless 7 representatives on the board who are eligible to vote on the matter are present. The consumer and insurance department representative on the board shall be eligible to vote on all matters not directly involving the facility's budget or personnel administration.

(g) All board meetings shall be open to members, producers, the commissioner or a person designated by the commissioner, and to the public except upon majority vote of the board when permitted or required by law.

(h) The board shall recommend to the commissioner:

- (1) A day-to-day plan of operation to carry out the intent and purpose of the facility;
- (2) Appointment or employment of such staff as is necessary to carry out the business of the facility;
- (3) Contracts as necessary to provide space, equipment, and services for the facility's purposes;
- (4) Appointment of standing or temporary committees from among members and producers;
- (5) Assessments as necessary for the operating expenses of the facility;
- (6) Apportionment of the underwriting results among the members and the need to levy assessments or make such distributions as are appropriate for such apportionment;
- (7) Distribution of an annual report and minutes of board meetings to members and to the commissioner;
- (8) Selection at the biennial meeting of a chair, who shall not serve for more than 2 consecutive terms;
- (9) Selection at the biennial meeting of a vice chair, who shall:
  - a. In the absence of the chair, act as the chair; and
  - b. Not serve for more than 2 consecutive terms; and

(10) Any other action it deems necessary or appropriate for efficient and effective operation of the facility.

(i) The board or its designees shall periodically review the market for automobile insurance throughout the state of New Hampshire to make certain that eligible risks can readily obtain such insurance. Such review shall include a review of any complaints received from the public and from duly licensed producers and addressed to the facility or to the commissioner.

Ins 1406.08 Meetings.

(a) There shall be a biennial meeting of the facility in New Hampshire at a date and time designated by the board.

(b) Special meetings of the facility may be called at any time by the chair of the board, and special meetings shall be called by the chair upon the written request of:

(1) The commissioner;

(2) At least 6 board representatives; or

(3) At least 15 members not under the same management and which write at least 25% of the state private passenger automobile insurance premium.

(c) Notice of all biennial and special meetings of the facility shall be given, or caused to be given, by the chair in writing, mailed to or by facsimile, e-mail, electronic transmission, or similar electronic mediums directed to each member at its latest address appearing upon the records of the facility and to the commissioner. Except where otherwise provided in this rule, if notice is mailed, it shall be placed in the mail not less than 10 days prior to the date of the meeting. If notice is given by a generally accepted electronic medium, it shall be given not less than 5 days prior to the meeting.

(d) A quorum at any biennial or special meeting of the facility shall be constituted by those represented by a proxy and those in attendance. A member company shall not appoint more than one company in its class of companies to execute a proxy.

(e) The matters to be considered at any special meeting of the facility shall be only those matters set forth in the notice of such meeting. At biennial meetings, members may consider and act upon all matters properly brought before them, whether or not contained in the notice thereof.

(f) Each member of the facility shall be entitled to one vote at all biennial or special meetings of the facility.

(g) Members may vote by mail on written propositions and such votes shall have the same standing as if cast by such member in person. Such votes shall be kept on file by the facility and shall be made available to the commissioner upon request.

(h) Minutes of all meetings of the facility and of the board shall be sent to all members and to the commissioner. The commissioner shall make copies of the minutes available to the public upon request, pursuant to the provisions of RSA 91-A.

Ins 1406.09 Statistical Data. Each member shall furnish or cause to be furnished such statistics in connection with insurance subject to the facility as required by the board, or commissioner, and each member shall authorize its statistical agent to release any such data as requested by the board. Such statistics shall be furnished when requested by the commissioner.

Ins 1406.10 Cessions.

(a) When a policy of insurance is ceded to the facility, a member shall cede all terms and provisions of the policy covering private passenger automobile(s).

(b) Coverages up to the following limits shall be eligible for cession to the facility:

- (1) Bodily injury liability \$250,000 each person, \$500,000 each accident;
- (2) Property damage liability \$100,000 each accident;
- (3) Single limit bodily injury and property damage liability \$500,000 each accident;
- (4) Medical payments \$10,000 each person;
- (5) Uninsured motorists at least equal to bodily injury liability limits;
- (6) Physical damage, loss of use, or damage to automobiles on an actual cash value basis subject to the policy deductible provisions;
- (7) Towing and labor \$25 per disablement; and
- (8) Any other automobile insurance or limits required by law.

(c) Cessions to the facility with respect to a policy written on business which is new to a member and which is new to the group of insurers under common management or control to which the member belongs shall be as follows:

(1) A policy may be ceded by a member as of the policy effective date, provided the policy meets the cession eligibility requirements and the following criteria:

a. The notice of cession is received by the facility within 20 days after the policy effective date; or

b. The notice of cession is received by the facility from 21 to 60 days after the policy effective date and either:

1. The company provides documentation to the facility that the policy was ceded as a result of misinformation provided by the insured; or

2. The company provides documentation to the facility that the policy was originally written as a facility policy, at the facility rate, indicating that the company or producer initially intended to cede the policy. Otherwise, the cession shall be effective on the date the notice of cession is received by the facility;

(2) No loss incurred within the 60-day retroactive period shall be covered by the facility unless the member provides reliable information to the board that the policy was ceded as a result of misinformation provided by the insured not merely because of the loss;

(3) With respect to a policy written on business which is new to a member and which is new to the group of insurers under common management or control to which the member belongs, if any, the premium for such a policy ceded subsequent to the policy effective date shall be the facility premium retroactive to the policy effective date;

(4) Notwithstanding (2) above, if the insured elects not to accept the offer made in the notification of change as required by Ins 1406.10[-](h), any earned premium charged to the

insured shall be at the originally quoted rate, unless the cession or movement to a new company or tier is based upon misinformation provided by the insured;

(5) Any return premium from this cancellation request pursuant to (4) above shall be calculated pro rata and returned within 30 days pursuant to RSA 402:81;

(6) With respect to a replacement policy as defined in Ins 1405.02(x), the cession shall be effective as of the effective date of the replacement policy, provided the notice of cession is received by the facility within 20 days of the replacement policy effective date. Otherwise, the cession shall be effective on the date the notice of cession is received by the facility;

(7) With respect to a renewal policy as defined in Ins 1406.02(w), on the renewal date of an expiring policy, provided written notice is received by the facility before the effective date of the renewal policy. Otherwise, the cession shall be effective on the date written notice is received by the facility;

(8) With respect to a policy ceded at other times, on receipt by the facility of the required notice, but such acceptance shall not be retroactive; and

(9) No renewal policy shall be ceded to the facility unless a 45-day written notice of such action is delivered to the policyholder.

(d) The facility charge for members on ceded policies shall be the facility gross premium less 15 percent facility gross premium and less commission allowance for the cedable limits, regardless of the date of cession, except that a pro rata credit against the charge shall be allowed in the event of cancellation of the policy.

(e) Policies ceded shall remain in the facility until the expiration date or cancellation date of the policy.

(f) No policy shall be ceded to the facility unless such policy has at least one SDIP point. In addition, a motor vehicle report shall be ordered on all licensed members of the household on all policies ceded to the facility as new business and at least every 3 years thereafter on renewal business for the purpose of determining SDIP points.

(g) No policy shall be ceded to the facility solely because of age, place or area of residence, race, color, creed, national origin, marital status, lawful occupation including military service, or credit information pursuant to RSA 417:4 VIII(e).

(h) Each member shall have the following limitations on its cessions to the facility:

(1) Each member shall cede no more than 10 percent of its business;

(2) Each member shall pay to the facility 2 dollars for each dollar of premium over the limitation that it has ceded to the facility;

(3) Each member's cessions shall be calculated based on a fiscal year of January 1 to December 31; and

(4) The cession date shall be determined by the effective date of the policy ceded.

(i) No cession of a new policy to the facility shall be initiated after the 60th day following the effective date of the new policy and shall not be effective unless written notice is mailed to the insured. Such notice shall include the terms and premiums for coverage.



(j) Once no SDIP point(s) is included in the experience period for a renewal policy, the insurer shall offer the renewal policy in the voluntary market.

Ins 1406.11 Facility Charges, Premium, and Allowance.

(a) Each member ceding a policy of automobile insurance covering a private passenger automobile risk to the facility shall give notice of cession to the facility for that risk. The facility shall debit the member's account in the amount of the member premiums ceded. Premium ceded shall be 85 percent of the facility gross premium less commission allowance.

(b) Each member ceding risks shall, with respect to losses incurred in connection therewith, subject to the limits of coverage provided in this rule, receive a credit against the sum of such debits and facility gross premiums on ceded business for losses paid less recoveries received each month.

(c) The facility shall, quarterly or less frequently as determined by the board, issue summaries to all members reflecting each member's cumulative balances on business it ceded to the facility, providing reimbursement for those members with allowable credits in excess of debits, and shall submit a statement to those members with debits which are in excess of allowable credits. A member so billed for debits shall remit such excess within the period provided in the plan of operation, subject to interest charges at a legal interest rate per month, or fractional part thereof, for late payment as provided therein.

(d) A member which in any month reports allowable credits in excess of debits for ceded risks may request reimbursement for such excess. The facility shall reimburse the member for such excess after the board acts upon such request. The board shall act on an insurers request for reimbursement pursuant to this section.

(e) The maximum commission allowance which may be credited against the premium ceded to the facility shall be 10 percent of the facility gross premium for those companies paying an actual commission. For all other companies, the maximum commission allowance which may be credited against the premium ceded to the facility shall be 5 percent of the facility gross premium. The charges in lieu of paid commissions shall be allowable only to the extent that such have been filed with the insurance department.

(f) SDIP point surcharges shall be applied to the gross base premium as follows:

(1) Each member shall cede to the facility 85 percent of the surcharge amounts less commission allowance, according to the SDIP points chargeable in accordance with the provisions of Ins 1406.13 below, to the ceded policy in accordance with the following schedule:

- a. For a policy subject to 1 SDIP point - 90;
- b. For a policy subject to 2 SDIP points - 200;
- c. For a policy subject to 3 SDIP points - 330;
- d. For a policy subject to 4 SDIP points - 480;
- e. For a policy subject to 5 SDIP points - 650;
- f. For a policy subject to 6 SDIP points - 840;
- g. For a policy subject to 7 SDIP points - 1,040;
- h. For a policy subject to 8 SDIP points - 1,240; and

i. For each additional point - 200; and

(2) The surcharge commission shall be \$5 for each point to a maximum of \$25 per policy or the actual commission allowance, whichever is less.

(g) The premium amount to be ceded shall be 85 percent of gross base premium other than SDIP surcharges less 10 percent if commissions are paid or less 5 percent if commissions are not paid plus 85 percent of the SDIP surcharge less the SDIP commission allowance or the actual SDIP commission, whichever is less.

Ins 1406.12 Safe Driver Incentive Plan and SDIP Points for the New Hampshire Automobile Reinsurance Facility.

(a) SDIP points for motor vehicle convictions shall be assigned per licensed operator in accordance with motor vehicle records during the experience period as follows:

(1) Convictions shall be assigned 4 points for the following offenses:

- a. Homicide or assault arising out of the operation of a motor vehicle;
- b. Failure to stop and report when involved in an accident; or
- c. Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs.

(2) Convictions shall be assigned 3 points for the following offenses:

- a. Driving a motor vehicle in a careless or reckless manner;
- b. Driving while a license is suspended or revoked;
- c. Operating a motor vehicle without the owner's permission or consent;
- d. Highway racing;
- e. Driving to endanger; or
- f. Text messaging and device usage while operating a motor vehicle; and

(3) Convictions for improper passing of a school bus shall be assigned 2 points.

(b) Conviction of any moving traffic violation other than those listed above shall result in the assignment of one point after the second conviction of such moving traffic violation and one point for each additional conviction.

(c) Convictions for the following shall be subject to assignment of one point but only upon the second conviction for the same offense within the 2 years immediately preceding the effective date of the policy period:

- (1) Any violation of motor vehicle equipment requirements under RSA 266;
- (2) Failure to display current license plates or registration stickers or diesel fuel permits;
- (3) Failure to have a valid operator's license or registration certificate; or
- (4) Non-inspection of a motor vehicle.

(d) SDIP points for chargeable accidents shall be assigned for chargeable accidents that occurred during the experience period involving the applicant or any other operator of the vehicle currently a resident of the same household as follows:

- (1) For each automobile accident resulting in the following, one point shall be assigned:
  - a. Excess of \$750 in bodily injury but less than \$7,500 in bodily injury; or
  - b. Excess of \$1,500 damage but less than \$15,000 in damage to any property, including their own;
- (2) For each automobile accident resulting in the following, 2 points shall be assigned:
  - a. Death of any person;
  - b. \$7,500 or more bodily injury to any person; or
  - c. \$15,000 or more in damage to any property including one's own;
- (3) For each SDIP chargeable automobile accident in excess of 2 chargeable accidents occurring within the experience period, 3 points shall be assigned;
- (4) No point(s) shall be assigned for an accident if the insured demonstrates that the accident occurred under the following circumstances:
  - a. The automobile was lawfully parked. An automobile rolling from a parked position shall be considered unlawfully parked under the operation of the last operator;
  - b. The applicant, other operator residing in the same household, or owner was reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such person;
  - c. The automobile of an applicant or other operator resident in the same household was struck in its rear by another vehicle, and the applicant or other resident operator has not been convicted of a moving traffic violation in connection with the accident;
  - d. The operator of the other automobile involved in such accident was convicted of a moving traffic violation, and the applicant or other resident in the same household was not convicted of a moving traffic violation in connection therewith;
  - e. The automobile operated by the applicant or other operator resident in the same household is damaged as a result of contact with a "hit and run" driver, and the applicant or other operator so reports the accident to the proper authority within 24 hours;
  - f. Accidents involving damage by contact with animals;
  - g. Accidents involving physical damage limited to and caused by flying gravel, missiles, or falling objects;
  - h. Accidents occurring as a result of the operation of an automobile in response to an emergency if the operator at the time of the accident was responding to a call to duty as a paid or volunteer member of any police or fire department, first aid squad, or of any law enforcement agency but not an accident occurring after the emergency situation ceases or after the private passenger automobile ceases to be used in response to such emergency;

i. An automobile accident involving only bodily injury or property damage to the applicant or any other operator of the automobile currently a resident in the same household, unless the said applicant or operator is convicted of a moving traffic violation in connection with the occurrence; or

j. Accidents occurring as a result of the operation of a vehicle by a municipal public works or highway department employee while on official duty but not an accident occurring once the municipal public works or highway department employee is no longer on official duty.

(5) If the principal operator of the automobile has no surcharge for an accident, but has been licensed less than 2 years, one point shall be assigned;

(6) Conviction points shall be assigned in addition to any points for accidents; and

(7) Accident surcharge points shall only be based on paid losses.

(e) Changes requiring adjustments of premium shall be computed pro-rata.

(f) Changes which occur during the term of the policy shall be calculated using the rates on the inception date of the policy period.

(g) Insurance companies shall not make premium changes to an automobile policy during the policy period in the reinsurance facility other than for the following reasons:

(1) Addition of a new or replacement vehicle;

(2) Addition or deletion of a driver;

(3) Change in garaged location;

(4) Change in coverage;

(5) Change in limits;

(6) Change in use of vehicle;

(7) The insured has attained a new age;

(8) Change in marital status of any listed driver;

(9) The addition of new coverage to a vehicle on the policy or for a replacement vehicle;

(10) Deletion of a vehicle; or

(11) Discovery of convictions or occurrences, which occurred during the current or first prior policy period, resulting in losses incurred or paid.

(h) If premium changes are made during the policy period to reflect changes pursuant to (g)(11) above, they shall be appropriately removed on the same basis during a subsequent policy period.

(i) Policies ceded to the facility shall not be eligible for safe driver discounts.

Ins 1406.13 Assessments and Participation.

(a) Facility earned premiums, incurred losses, income, and expenses shall be determined on the basis of generally accepted insurance accounting principles. The plan of operation shall provide that all

investment income earned on business reinsured by the facility shall enter into the determination of the facility's net operating results. The facility shall provide periodic settlement to the members based on the facility's net operating results. The members shall retain for their individual credit all investment income earned prior to the time facility gross premium is forwarded to the facility.

(b) Assessments to pay for facility losses and expenses shall be levied, and any profits shall be distributed, pursuant to the plan of operation.

(c) Such assessments or distributions shall be allocated among the members based on New Hampshire written or earned premium in accordance with the following:

(1) Assessments for private passenger automobile insurance, other than physical damage, shall be shared amongst the members as follows:

a. The ratio of a member's total private passenger automobile net direct written car years to the total of such car years of all members shall be used for allocation of 20 percent of the facility's profits or losses to the individual members; and

b. The ratio of a member's ceded private passenger automobile insurance car years to the total of all such ceded car years shall be used for the allocation of 80 percent of all the facility's profits or losses to the individual members;

(2) Assessments for private passenger automobile physical damage insurance shall be shared amongst the members as follows:

a. The ratio of a member's total private passenger automobile physical damage net direct written car years to the total of such car years of all members shall be used for the allocation of 20 percent of the facility's profits or losses to the individual members; and

b. The ratio of a member's ceded private passenger automobile physical damage years to the total of all such ceded car years shall be used for the allocation of 80 percent of all the facility's profits or losses to the individual members; and

(3) Assessments of facility net operation expense shall be shared amongst the members as follows:

a. The ratio of a member's total private passenger automobile net direct written car years for the most recent available calendar year to the total of such car years of all members shall be used for the allocation of 20 percent of all assets, liabilities, income, and expenses not properly chargeable to the profit or loss of ceded risks; and

b. The ratio of a member's ceded car years for the most recent available calendar year to the total of all such ceded car years shall be used for allocation of 80 percent of all assets, liabilities, income, and expenses not properly chargeable to the profit or loss of ceded risks.

#### Ins 1406.14 Audits.

(a) Facility business written by members shall be subject to review and audit in a manner and time prescribed by the board, and each member of the facility specifically authorizes the board or its designee to audit that part of the member's business which is ceded to the facility or which is relevant to the operation of the facility.

(b) The facility shall be subject to examination at the facility's expense by the commissioner.

Ins 1406.15 Indemnification.

(a) Any person or member made or threatened to be made a party to any action, suit, or proceeding, because such person or member served on the board or on a committee of the facility or was an officer or employee of the facility, shall be indemnified by the facility.

(b) The indemnification shall consist of all judgments, fines, amounts paid in settlement, reasonable costs and expenses, including attorney's fees, and any other liabilities that might be incurred as a result of such action, suit, or proceeding, or threatened action, suit, or proceeding.

(c) A member or person shall not be indemnified by the facility in relation to matters to which the person or member is adjudged in such action, suit, or proceeding to be liable by reason of breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance, or reckless disregard of the responsibilities in performance of the member's or person's duties or obligations to the facility and with respect to any criminal actions or proceedings.

(d) If a person or member had reasonable cause to believe that their conduct was lawful, such indemnification shall be provided whether or not such person or member is a member or is holding office or is employed at the time of such action, suit, or proceeding.

(e) Indemnification shall not be exclusive of other rights such person or member may have and shall extend to the successors, heirs, executors, or administrators of such person or member.

(f) In the event of settlement or other termination of a matter before final adjudication, indemnification shall be provided only if the board is advised by independent counsel that the person or member to be indemnified did not, in counsel's opinion, commit such a breach of duty.

(g) In each instance in which a question of indemnification arises, entitlement thereto, pursuant to the conditions set forth above, shall be determined by the board which shall also determine the time and manner of payment of such indemnification.

(h) However, a person or member who or which has been wholly successful, on the merits or otherwise, in the defense of a civil or criminal action, suit, or proceeding of the character described above shall be entitled to indemnification as authorized in this section.

(i) Nothing herein shall be deemed to bind a person or member who or which the board has determined not entitled to indemnification or to preclude such person or member from asserting the right to such indemnification by legal proceedings.

(j) Indemnification as is herein provided shall be apportioned among all members, including any named in any such action, suit, or proceeding, pursuant to this rule.

Ins 1406.16 Hearings and Review.

(a) Any person aggrieved with respect to the operation of the facility may petition the board for review on any alleged failure to comply with the plan of operation or any alleged improper act or ruling in the administration of the facility pursuant to Ins 1406.07(i). The request for review shall be made within 30 days after the date of the alleged violation or improper act or ruling. The review shall be held within 30 days after receipt of the request. The review shall be held by a panel, appointed by the chair, consisting of 3 board members entitled to vote. The decision of a majority of the panel shall be deemed to be the decision of the board unless the full board on its own motion shall modify or rescind the panel's action.

(b) Any board decision may be appealed to the commissioner by filing notice of appeal with the facility and commissioner within 30 days after the date of the decision's issuance. The commissioner shall conduct a hearing under RSA 400-A:17.

(c) Any aggrieved member may request a public hearing and ruling by the commissioner on the provisions of the plan of operation. The request for a hearing shall specify the matters to be considered. The hearing shall be held within 30 days after receipt of the request. The commissioner shall give public notice of the hearing and the matters to be considered not less than 10 days in advance of the hearing date.

(d) In the case of any review held by the board pursuant to this section, the board shall issue a decision within 30 days after the review. In the case of any hearing held by the commissioner pursuant to this section, the commissioner shall issue a ruling or order within 90 days after the close of the hearing.

(e) Orders of the commissioner on hearings under this rule shall be subject to judicial review as provided in RSA 400-A:24.

Ins 1406.17 Amendments.

(a) The plan of operation for the New Hampshire automobile reinsurance facility shall be amended by the commissioner at any time pursuant to the provisions of RSA 541-A.

(b) Amendments to the plan of operation shall be proposed at any biennial, special, or board meeting of the facility and recommended to the commissioner for approval. Not less than 15 days written notice of any such meeting shall be given, or caused to be given by the chair of the board, in which notice the action proposed to be taken shall be fully set forth. Such amendments proposed by the members shall not become effective unless approved by the commissioner pursuant to the provisions of RSA 404-C:1.

Ins 1406.18 Claim Reserves. Each member shall maintain claim reserving procedures for claims arising out of facility business commensurate with the procedures utilized by the members for claims arising out of non-facility business.

Ins 1406.19 Reinsurance Facility Rates. The facility rates shall be developed utilizing data generated by the facility and filed for approval pursuant to the provisions of RSA 412:15 and RSA 412:16.

Ins 1406.20 Nonrenewal and Cancellation Protection. Insureds ceded to the facility shall be entitled to the same statutory and regulatory protections governing nonrenewal and cancellation as in the voluntary market.

APPENDIX

Rule	State Statute the Rule Implements
Ins 1406.01	RSA 400-A:15, I; RSA 404-C; <del>RSA 412:9</del> ; RSA 412:43[-]; <del>RSA 417-A:3-b1</del>