

CHAPTER Ins 1400 AUTOMOBILE INSURANCE

Statutory Authority: RSA 400-A:15; RSA 404-C; RSA 412; RSA 414;
RSA 417-A

PART Ins 1401 THE WRITING OF, CANCELLATION OF, OR REFUSAL TO RENEW
POLICIES OF AUTOMOBILE INSURANCE

Ins 1401.01 Definitions.

(a) "Act" is RSA 417-A.

(b) A motor vehicle which is used for car pool purposes shall not be deemed to be "used as a public or livery conveyance for passengers" provided that the owner of such motor vehicle does not receive any remuneration from his passengers for such service other than a reasonable reimbursement for expenses.

(c) The terms "renewal" or "to renew" as used in this part mean 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. Such renewal policy shall provide types and limits of coverage at least equal to those contained in the policy being superseded. The issuance or delivery of a certificate or notice extending the term of a policy beyond its policy period or term shall provide types and limits of coverage at least equal to those contained in the policy being extended.

(d) The act does not apply to any policy issued under the New Hampshire automobile insurance plan. Such policies continue to be governed by the applicable provisions of that plan.

(e) "Policy period", as used in the act, refers to that period of time set forth in the policy itself during which the policy is to remain in effect. However, if the policy contains no fixed expiration date, or if the policy provides for a policy period of less than 12 months in duration, such policy shall be considered as if written for successive policy periods of 12 months. Therefore, an insurer who writes a policy which is to remain in effect for a period of less than 12 months must, unless the insurer has a proper basis under the act to cancel such policy, continue that policy in force for a period of 12 months before the insurer can refuse to renew that policy and having renewed the policy at the end of that 12-month period, must continue the policy in force for a further period of 12 months, and so on. If the insurer cannot determine the original date of issue, that date shall be deemed to be the first renewal date subsequent to this act.

(f) Each member of a group of affiliated insurers shall not be considered a separate insurer for purposes of the act. Therefore, if one company who is a member of a group of affiliated companies, refuses to write, cancels, or refuses to renew a particular policy but, at the same time, offers to arrange insurance for the applicant or insured with another member of the same group, there has not been a refusal to write, cancellation, or refusal to renew by the first company. However, no company shall take such action unless it does so based on underwriting guidelines filed with the commissioner. The movement of a policy from one company to another within a group of affiliated companies or, the movement of a policy to a different tier within one company resulting in a different rate for the insured may only occur on the renewal date of the policy and shall require a 45-day written notice of such action to the policyholder.

The notice shall contain the terms and premiums for coverage with the new company.

(g) The term "insurer" does not apply to insurance agents except to the extent that they act as common-law agents for companies and only for the purpose of imputing their acts to the companies as principals.

(h) The term "SDIP" as used in this part means Safe Driver Incentive Plan as defined in Ins 1406.18.

(i) The term "nonstandard market" as used in this part refers to a specific coverage or class of business not readily available in the voluntary market.

(j) The term "tier" as used in this part refers to a level or division of a company's rating system that will yield a separate and distinct rate for automobile insurance.

(k) "Replacement policy" is a policy that a company issues to replace a voluntary new business policy for the purpose of ceding the insured to the facility or moving the insured to a higher rated company or tier. Notice must be provided as required by 1406.16(i).

Ins 1401.02 Cancellation; Refusal to Write; Refusal to Renew;
Insufficient Grounds.

(a) The act manifests the intent of the New Hampshire legislature to prohibit discrimination in providing automobile insurance on the basis of the factors set forth in RSA 417-A:3. A cancellation, refusal to write, or refusal to renew based solely upon one or more of such factors is a violation of the act.

(b) An insurer shall not place a new business applicant into a nonstandard market or assigned risk plan solely because of his age, occupation, residence or any of the factors cited in RSA 417-A:3 as discriminatory.

(c) Any refusal to write, refusal to renew or cancellation action for reasons which are related to, proceed from or associated with the factors age, residence, sex, race, color, creed, national origin, ancestry, marital status or lawful occupation, including the military service, are contrary to law. For example, refusing to write a youthful operator solely because he does not reside with his parents is actually a refusal based on the youthful operator's age. No one would expect or require that an adult operator live with his parents. Therefore, such reason for refusal can be directly traced to the prohibitive factor of age.

(d) When an insurance company and insurance agent choose to terminate their business relationship, usually the insurance agent will place any accounts which are refused renewal because of such termination with other companies still contracted with his agency. Refusal to write such accounts by the remaining insurance companies still contracted with that agency solely because of age, residence, race, color, creed, national origin, ancestry, marital status or lawful occupation, including the military service is, contrary to law.

(e) An insurer may not refuse to write, refuse to renew or cancel a policy of automobile insurance solely because of an insured's or applicant's marital status or sex. This means that an insurer may not refuse to write,

refuse to renew or cancel automobile insurance solely because the applicant or insured is single, separated, divorced, married, male or female. The presence or absence of marital status cannot be the sole factor in determining the acceptability of an insured or applicant for automobile insurance.

(f) An insurer may not refuse to write, refuse to renew or cancel an automobile policy solely because of an applicant's or insured's residence and/or occupation. For the purposes of this part, the term "occupation" shall include the distance which must be traveled by an individual to his place of occupation as well as the actual geographical location of an individual's place of occupation. Therefore, it would be contrary to the provisions of this part to refuse to write, refuse to renew or cancel a policy of automobile insurance for any person solely because of the nature of his occupation, the distance which he must travel to get to and from his place of occupation, and the geographical location of his place of occupation.

(g) No agent, broker or other producer shall be penalized in any way by an insurer for submitting applications for a policy of automobile insurance to such insurer. Under appropriate circumstances, a pattern of agency terminations by an insurer may evidence an intent by an insurer to accomplish indirectly what RSA 417-A:3 prevents such insurer from doing directly.

(h) If an insurer is willing to provide an applicant the minimum limits of insurance coverage required by RSA 268 for purposes of demonstrating financial responsibility and so advises the applicant, such insurer has adequately evidenced its willingness to write a policy of automobile insurance for such applicant. Even though the applicant declines to accept such minimum coverage because he wants higher limits of coverage, there has not been a refusal to write for purposes of the act.

(i) If an insurer is willing to provide an applicant comprehensive and collision coverages subject to reasonable deductibles which have been approved by the department and so advises the applicant, such insurer has evidenced its willingness to write such coverages for the applicant. Even though the applicant declines to accept such coverages because he is not willing to assume the deductibles, there has not been a refusal to write for purposes of this act.

(j) The notice required for movement of a policy from one company to another within a group of affiliated companies, the movement of a policy to a different tier within one company, or cession to the facility shall include the terms and premium for coverage with the new company or tier.

Ins 1401.03 Coercion by Insurer. No insurer shall refuse to renew a policy of automobile insurance previously issued to an individual solely because such individual has no other policy of insurance with said insurer.

Ins 1401.04 Cancellation Grounds.

(a) Insurers are estopped from claiming that suspension or revocation of an insured's driving privileges are grounds for asserting that the insured's coverage has been forfeited under the provisions of RSA 259:61, when the suspension or revocation can be directly attributed to the insurer's failure to file the necessary certification of insurance, such certification to comply with provisions of RSA 264.

(b) The insurer has a positive duty to protect the driving privileges of its insureds. Insurers are stopped from claiming that suspension or revocation

of a named insured's driving privileges are grounds for cancellation under RSA 417-A:4-I(b), when the suspension or revocation may be directly attributed to the insurer's failure to file the necessary certification of insurance, such certification to comply with provisions of RSA 268.

Ins 1401.05 Notice of Cancellation. Refusal to Renew, Notice.

(a) It is not the intention of this department to specify a form or notice of cancellation or refusal to renew which must be used by all insurers. Therefore, each insurer shall prepare the forms of notice which it proposes to use and submit such to the insurance commissioner for approval prior to use, provided it has not already received departmental approval thereof.

(b) However, as a guideline, the following language or substantially similar language will satisfy the requirements of the act:

(1) Right of insured to request reasons for action of insurer.

"As required by New Hampshire law, upon written request, mailed or delivered to this company, not less than 10 days prior to the effective date of this, cancellation refusal to renew, the company will supply to you within 5 days of the receipt of your request the reason(s) why it has taken this action. Upon receipt of the reason(s), you have an additional 10 days to request, in writing, a review by the insurance commissioner."

(2) Right of insured to request insurance commissioner to review action by insurer.

"As provided by New Hampshire law, you may immediately request in writing within 10 days of receipt by you of this notice that the insurance commissioner review this action taken by the company. Such request should be directed to the commissioner of insurance, New Hampshire insurance department, Concord, New Hampshire, 03301, and should clearly state the basis of the request."

(3) Notification of insured of coverage available under New Hampshire automobile insurance plan.

"As provided by New Hampshire law, you are advised that you may be eligible for automobile insurance coverages through the New Hampshire Reinsurance Facility."

(c) Any applicant for a policy who is refused such policy by an insurer may in writing within 10 days of notice of such refusal request the insurer to supply the reasons for such refusal. The insurer shall supply such reasons within 5 days of receipt of such request, and shall also advise the applicant that he may request in writing that the insurance commissioner review the action of the insurer in refusing to write a policy for the applicant.

(d) Reasons provided by the insurer for refusal to write, refusal to renew and cancellation actions must be outlined in detail. Such reasons as "does not meet underwriting requirements", "loss frequency", or "conviction frequency" are not sufficiently specific. In cases involving either loss frequency or conviction frequency, insurers shall specify such details as dates of loss or convictions, parties involved, and amounts paid, if any, when communicating reasons to the insured or to the insurance department. If an applicant or insured does not meet "underwriting requirements", the insurer

shall specify in detail all areas in which such applicant or insured is deficient with respect to such underwriting requirements.

(e) A 45-day notice of cancellation must be provided where a policy has either been in effect for 60 days or is a renewal and is being cancelled during its term for reasons other than nonpayment of premium.

Ins 1401.06 Notice of Nonrenewal Not Required. A notice of nonrenewal for nonpayment of premium on a policy written on other than a continuous basis is not required if the insurer has manifested in writing its willingness to renew by issuing or offering to issue a renewal policy, certificate or other evidence of renewal or has manifested such intention in writing by other means. For the purpose of this section, a policy written on a "continuous basis" includes a policy written on a "continuous-until-cancelled" basis and a policy written on a condition indicating that such policy will be continued, renewed, considered in force if the required premium is paid to or received by the insurer on or before a specified due date. Where a policy is written on a continuous basis, as described above, a written notice of cancellation providing at least 10 days additional coverage must be released to the insured in the event of nonpayment of the "continuation premium." An insurer may include an "offer to reinstate" along with such notice of cancellation if desired.

Ins 1401.07 Review Request; Reasons for Refusal. Written requests for review in whatever form will be accepted and processed by the department.

Ins 1401.08 Review Procedure; Termination of Policy.

(a) The department may conduct its own independent investigation of a particular matter brought to its attention pursuant to RSA 417-A.

(b) Upon the request of the department additional written statements shall be provided. If either party to the review requests the opportunity to present his position orally, the applicant and representative of the insurer may appear and present their arguments at such hearing.

(c) RSA 417-A:8 provides that in the case of a cancellation or a refusal to renew a policy, such policy shall remain in effect until the conclusion of review by the department or the date referred to in paragraph II of RSA 417-A:5, whichever is later. Thus, under certain circumstances, a policy may by virtue of the act remain in force beyond the period for which the insured has paid a premium.

(d) It has been the practice in this state, for automobile insurance companies canceling, nonrenewing or refusing to write insurance coverages, to supply to this department on request the reasons for said cancellations, nonrenewals or refusals to write. The supplying of such information is mandatory under the provisions of RSA 417-A:8, and failure to supply such information is punishable by suspension or revocation of license as well as a fine under the provisions of RSA 417-A:10. Refusal to supply such information has been based on a claim by insurers that the provisions of the recently enacted Fair Credit Reporting Act prohibit the communication of that information to this department. It is the position of this department that the Fair Credit Reporting Act applies only to "Consumer Reporting Agencies" as defined in Title 15 USCA section 1681a(f): "The term 'Consumer Reporting Agencies' means any persons which, for monetary fees, dues, or corporate nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the

purpose of furnishing consumer reports to third parties, and which uses any means or facility of Interstate Commerce for the purpose of preparing or furnishing consumer reports." Insurance companies do not qualify as "Consumer Reporting Agencies" within the statutory definition. Therefore, none of the provisions of the Act, including 15 USCA section 1681f, Disclosures to Governmental Agencies, limiting the information that need be supplied Governmental Agencies, or 15 USCA section 168t, Relation to State Laws, superseding inconsistent State Laws, applies. The position of this department having been made clear, any insurance company subsequent hereto, refusing to furnish this department with relevant cancellation, nonrenewal or refusal to write information may have its license suspended or revoked or be fined \$500 for each such refusal.

(e) Unsubstantiated information developed by credit or character investigations should not be relied upon in determining the reasons for refusal to write, refusal to renew or cancellation actions taken by insurers. In the event of appeal, information developed by such investigations may be considered only if that information has been confirmed and validated accurately and in detail by a responsible secondary source.

(f) Each insurer may file with the insurance commissioner the names of its representatives who are to be notified in the event that the insured or an applicant requests the commissioner to review a cancellation, refusal to renew, or refusal to write involving that insurer.

Ins 1401.09 Penalty and Records.

(a) Failure by an insurer to comply with any rules, regulations, orders issued pursuant to RSA 417-A subject an insurer to a fine not exceeding \$500 for each violation in the discretion of the insurance commissioner, or suspension or revocation of such insurer's license, or both.

(b) The insurance commissioner may require that each insurer shall maintain records of the numbers of cancellations and refusals to write or renew policies and the reasons therefor and shall supply to the insurance commissioner such information as the commissioner may request.

PART Ins 1402 AUTOMOBILE LIABILITY INSURANCE

Ins 1402.01 Physical Examinations. RSA 412:2-b states that when an insurer requires any person to submit to a physical examination as a prerequisite to insurance or delivery of any motor vehicle liability policy, the insurer shall assume and pay the cost of the physical examination.

Ins 1402.02 Cancellation Because of Age; Prohibited. RSA 412:18-a states that no insurance company which insures against loss by reason of liability to pay damages to others for damage to property or bodily injury including death, arising from the operation, maintenance or use of motor vehicles in New Hampshire, shall cancel, reduce liability limits, refuse to renew or increase the premiums on any such motor vehicle policy for the sole reason that the person to whom such policy has been issued has reached a certain age. RSA 412:18-b indicates that the provisions of section 18-a cited above do not apply to youthful classified operators and an increase or decrease of premiums for such policies for any particular age group if a state-wide classification system approved by the insurance commissioner is adopted for such drivers. Provisions of these sections prohibiting cancellations, refusals to renew, reduction of liability limits and increases in premiums of motor vehicle policies solely

because of attained age duplicate provisions of RSA 417-a and parts proceeding therefrom. The provisions of section 18-a of RSA 412 do not apply to youthful classified drivers; however, the provisions of RSA 417 and RSA 417-A do apply to youthful classified drivers.

PART Ins 1404 UNFAIR AUTOMOBILE INSURANCE TRADE PRACTICES

Ins 1404.01 Definitions. RSA 417 applies to insurance companies, insurance agents and insurance brokers. The term "person" as defined in RSA 417 includes insurance companies, insurance agents and insurance brokers.

Ins 1404.02 Unfair Methods Prohibited. No person shall engage in this state in any trade practice which is defined in RSA 417 or determined pursuant to RSA 417 as an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

Ins 1404.03 Unfair Methods, Acts, and Practices Defined.

(a) RSA 417:4, VIII(e) states it is an unfair insurance trade practice to refuse to insure a risk solely because of age, except in the case of life, accident or health insurance place or area or residence, race, color, creed, national origin, ancestry, marital status or lawful occupation including the military service, except in the case of life, accident or health insurance of anyone who is or seeks to become insured or solely because another insurer has refused to renew an existing policy in which that person was the named insured or solely because the insured does not insure collateral business with the insurer. This section applies to automobile insurance as well as other lines of insurance.

(b) Since there is no reference to a minimum period of driving experience in RSA 417:4, VIII(e) any refusal to write, refusal to renew, or cancellation of a policy of automobile insurance by an insurer solely because of the number of years of driving experience or a lack of driving experience of the applicant or insured is contrary to law. As most so-called "inexperienced operators" are youthful operators, to this extent, "inexperience" is a direct reflection of one's age. Accordingly, no insurer shall cancel, refuse to write or refuse to renew a policy of automobile insurance on any person, regardless of years of driving experience solely because of such person's age.

Ins 1404.04 Orders and Penalty.

(a) If after hearing or at the expiration of the period set forth in a show cause order issued pursuant to RSA 417 any person is found to have violated RSA 417:3, the commissioner may suspend, revoke, or refuse to renew the license of that person. The commissioner in his discretion, in addition to or in lieu of such suspension, revocation or refusal to renew, may impose upon that person an administrative penalty of not more than \$2500 for each method of competition, act or practice found to be in violation of RSA 417:3. The commissioner shall collect the amount so imposed and may bring an action in the name of the state to enforce collection.

PART Ins 1405 REGULATION PERTAINING TO RATES, RATING PLANS CLASSIFICATION,
AND COVERAGES FOR AUTOMOBILE INSURANCE

Ins 1405.01 Rules and Regulations.

(a) Accidents involving private passenger-type automobiles, as defined in automobile rating manuals, which are used customarily as police, rescue or fire vehicles shall not be chargeable.

(b) Changes which occur during the term of the automobile insurance policy shall be calculated using the rates in effect on the inception date of the policy. Policies having no fixed expiration date shall be considered to have a 12-month term.

Ins 1405.02 Safe Driver Credits.

(a) Insurers shall provide a discount to insureds based on the following schedule:

- (1) A 5 percent discount for one Facility SDIP point free year;
- (2) A 10 percent discount for 2 Facility SDIP point free years;
- (3) A 15 percent discount for 3 Facility SDIP point free years; and
- (4) A 20 percent discount for 4 Facility SDIP point free years.

(b) Insurers may provide discounts greater than those detailed in the above schedule if such discounts are filed with the department and the policy is not ceded to the New Hampshire Automobile Reinsurance Facility.

(c) The discount provided shall be applied to the bodily injury, property damage, medical payments, comprehensive and collision portion of the premium.

(d) Every insurer shall indicate on the renewal notice and declaration sheet of each policy delivered on or after April 1, 1992 the number of years the insured has received safe driver credits.

Ins 1405.03 Reinsurance Facility Rates. The insurance commissioner shall establish separate rates for policies ceded to the New Hampshire Automobile Reinsurance Facility. These rates shall be determined utilizing data generated by the Reinsurance Facility. Approval shall be based on the same standards and criteria the commissioner utilizes in the approval of rates for the voluntary market as detailed in RSA 412:15. However, in establishing the rates the commissioner shall take into consideration the possible effects of excessive increases in reinsurance facility rates.

PART Ins 1406 PLAN OF OPERATION NEW HAMPSHIRE AUTOMOBILE REINSURANCE FACILITY

Ins 1406.01 Purpose.

The purposes of the Part are:

(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"; and

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

Ins 1406.02 Definitions.

(a) "Automobile insurance" means direct insurance against injury or damage, including the legal liability therefor, arising out of the ownership, operation, maintenance or use of motor vehicles, including but not limited to, medical payments insurance, personal injury protection insurance required by law, physical damage insurance and uninsured motorists insurance.

(b) "Commissioner" means the commissioner of insurance.

(c) "Designated carrier" means a member who volunteers and is accepted by the board of governors and who agrees to appoint a producer as its agent to provide coverage of automobile insurance for eligible risks in accordance with Facility requirements and the member's normal binding procedures, or a member designated by the board of governors to make such appointment for such purposes.

(d) "Designated producer" means an agent, broker or other producer which is a licensed fire or casualty agent or broker which is not authorized by any member to write automobile insurance for eligible risks in accordance with Facility requirements and which has been appointed by the board of governors or by the commissioner pursuant to Ins 1406.13(1) to a designated carrier for the purpose of providing immediate insurance to such risks.

(e) "Eligible risk" means a person whose principal place of residence is New Hampshire and who owns a private passenger automobile registered or principally garaged in this state or who has or is eligible to obtain a valid New Hampshire driver's license; or the state and its agencies and cities, counties, towns and municipal corporations in this state and their agencies provided, however, that no person shall be deemed an eligible risk if timely payment of premium is not tendered or if there is a valid unsatisfied judgment of record against such person for recovery of amounts due for automobile insurance premiums, and such person has not been discharged from paying such judgment, or if such person does not furnish the information necessary to effect insurance. In the case of a nonresident, the company may request from the applicant a certified copy of the applicant's motor vehicle record prior to providing coverage under the facility. Members of the armed forces shall be deemed residents.

(f) "Gross base premium" means premium charged the insured before the application of any Safe Driver Incentive Plan surcharge.

(g) "Facility gross premium" means gross base premium loss dividends paid to policyholders.

(h) "Member" means an insurer subscribing to the plan of operation of the facility. However, for the purpose of calculating the cessation limitation for Ins 1406.18(j) member shall mean an insurer or a group of affiliated insurers.

(i) "Motor home" means 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.

(j) "Person" means every natural person, firm, co-partnership, association, corporation, government or agency thereof.

(k) "Private passenger automobile" means a:

(1) Motor vehicle of the private passenger or station wagon type that is owned or hired under a long-term contract and is not used as a public or livery conveyance for passengers, nor rented to others without a driver;

(2) A motor vehicle with a pick-up body, a delivery sedan, a panel truck, or similar type vehicles owned by any person or by 2 or more relatives who are residents of the same household, 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; or

(4) Recreational vehicles which are subject to registration under RSA 215-A;

(5) Motor home owned by any person, or by 2 or more relatives who are residents of the same household, not customarily used in the occupation, profession, or business of the insured nor rented to others; and

(6) Trailers designed for use with a private automobile and registered in this state for other than commercial or business use.

A private passenger automobile does not mean a vehicle which is rated as part of a fleet of 5 or more motor vehicles of any type.

No vehicle described in this paragraph, shall be construed to be a private passenger automobile if it is rated as part of a fleet of 5 more motor vehicles of any type.

(l) "Commission allowance" means actual commissions paid to agents or other expenses incurred in lieu of agents' commission as approved by the insurance department.

(m) "Car year" means one vehicle insured for one 12 month period or one year.

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

Ins 1406.04 Basis of Participation.

(a) On and after the date reinsurance is available from the facility, 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 normally afforded by such insurer to the public, and utilizing the rates, rating plans, 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 which may be ceded to the facility. Each member of a group of affiliated insurers shall not be considered a separate insurer for purposes of this section.

(b) On and after the date reinsurance is available from the facility, no agent licensed 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 agent shall promptly submit the application to the insurer, and shall exercise whatever binding authority is normally available to him from that insurer.

(d) If the risk accepts the quotation but it is not within the agent's binding authority, the agent 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 will be effective at 12:01 A.M. on the day following receipt of the application by the insurer.

Ins 1406.05 Service.

(a) Every participating insurer and agent shall provide to any eligible risk seeking automobile insurance covering private passenger automobiles the same level of service regardless of whether the person is or becomes a risk which is ceded to the facility.

(b) The insurer has an affirmative duty to protect the driving privileges of its insureds; so that whenever it becomes necessary for an insured to file evidence of financial responsibility with the state of New Hampshire, such filing shall be made by the insurer covering the risk as soon as the insurer becomes aware of the requirement.

(c) When an eligible risk requests a filing of financial responsibility, the insurer shall make such filing as soon as the request becomes known and coverage is bound or the policy becomes effective.

Ins 1406.06 Agency-Company Relationships. No agent, broker or other producer shall be penalized in any way by an insurer for submitting an application for a policy of automobile insurance through any of the producer's licensed companies.

Ins 1406.07 RESERVED

Ins 1406.08 RESERVED

Ins 1406.09 RESERVED

Ins 1406.10 RESERVED

Ins 1406.11 RESERVED

Ins 1406.12 Obligation of Members.

(a) Every member shall be bound by the plan of operation of the facility and such rules of operation as the board of governors may prescribe.

(b) Any member whose membership in the facility terminates, nevertheless shall continue to be bound by the plan of operation of the facility and such other rules as the board of governors may prescribe 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 1406.18. 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) No judgment against the facility shall create any direct liability of the individual members.

Ins 1406.13 Board of Governors.

(a) The board of governors, hereinafter referred to as the "board," shall be composed of 12 representatives selected as follows:

(1) Two insurers which are members of the American Insurance Association;

(2) Two insurers which are members of the Alliance of American Insurers;

(3) Two insurers which are members of the National Association of Independent Insurers;

(4) Two insurers which are not members of any of the foregoing organizations;

(5) One consumer not a member of any of the organizations enumerated in sub-sections (1) through (4) above, to be selected by the commissioner;

(6) One member who is an employee for the insurance department selected by the commissioner; and

(7) Two licensed New Hampshire insurance agents to be appointed by the commissioner.

(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 board representatives selected by each of the organizations named above shall be announced at an appropriate annual or special meeting of the facility. At such meeting members not affiliated with any of the 3 insurer organizations shall separately select and announce their respective board members. Selection of their respective board representatives by the 3

insurer organizations shall be made in accordance with their respective procedures. Nominations and voting for the board representatives of the unaffiliated members may be in person by a representative of the unaffiliated member or by proxy. Each unaffiliated member shall be entitled to one vote at all such board selection meetings. The votes of a majority of the unaffiliated members voting shall select their board representatives.

(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 he is designated, unless such representative is subsequently appropriately designated to serve an additional term or terms.

(f) The board shall hold an annual meeting in conjunction with the annual meeting of the members and shall report a summary of the previous fiscal year's activities at that time.

(g) The board shall hold additional meetings as necessary when called by the chairman, or by the commissioner, or upon petition of 4 board representatives. No meeting shall be held with less than 10 days notice unless a majority of the board waive such notice requirement.

(h) Agendas for meetings shall be sent to all representatives on the board, to members requesting them and to the commissioner in advance of a regularly scheduled meeting along with the notice of such meeting. Only items specifically listed on the agenda will be considered unless 6 of the representatives on the board who are present vote for admission of each additional item.

(i) 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 6 representatives on the board who are eligible to vote on the matter are present. The consumer and insurance department representatives on the board shall be eligible to vote on all matters not directly involving the facility's budget or personnel administration.

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

(k) The board shall also have the following powers, duties and obligations:

(1) To establish rules of operation subject to the approval of the commissioner to carry out the intent and purpose of the facility;

(2) To appoint or employ such staff as is necessary to carry out the business of the facility;

(3) To contract as necessary to provide space, equipment and services for the facility's purposes;

(4) To appoint standing or temporary committees from among members and producers;

(5) To levy assessments as necessary for the operating expenses of the facility;

(6) To apportion the underwriting results among the members and to levy assessments or make such distributions as are appropriate for such apportionment;

(7) To distribute an annual report and minutes of board meetings to members, and to the commissioner;

(8) To select at the annual meeting a chairman who shall not serve for more than 2 consecutive terms; and

(9) To take any other action it deems necessary or appropriate for efficient and effective operation of the facility consistent with the purpose and intent of the facility.

(1) The board of governors 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 but not be limited to a review of any complaints received from the public and from duly licensed fire or casualty insurance producers and addressed to the facility or to the commissioner. Any licensed producer who does not have an existing agency relationship with any member for automobile insurance may apply to the board of governors for appointment to a designated carrier. For purposes of this part, a producer shall not be considered to have an existing agency relationship with any member if the producer's agency relationship is with a company that specializes in writing motorcycle insurance and the agency agreement restricts the producer to writing only insurance coverage on motorcycles. The board of governors shall review such application, and if it determines that the producer is duly licensed and does not have an existing agency relationship, the board of governors may appoint the producer to a designated carrier. All members are required to respond to any requests for information relevant to such application made by the board in a timely manner.

(m) Any licensed producer having applied for a designated carrier and is aggrieved by any decision of the board of governors may appeal that decision to the commissioner within 15 days. Failure of the board to act finally upon an application for designated status within 15 working days from the time of receipt of all necessary information pertaining to said application by the board, shall be deemed a denial of said application for the purpose of taking an appeal to the commissioner. The commissioner may conduct a review de novo and shall not be bound by any decision or finding of the board of governors.

Ins 1406.14 Meetings.

(a) There shall be an annual meeting of the facility in New Hampshire in May, unless the board shall designate some other date.

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

(1) The commissioner;

(2) Six board representatives; or

(3) Fifteen or more members not under the same management which write not less than 25% of the private passenger automobile insurance premiums written in this state.

(c) Notice of all annual and special meetings of the facility shall be given or caused to be given by the chairman in writing mailed to or by telegram 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 plan, 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 telegram it shall be given not less than 5 days prior to the meeting.

(d) A quorum at any annual or special meeting of the facility shall consist of 51% of the members, which members may be represented at the meeting in person or by 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 annual 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 meetings of the facility. Except where otherwise provided in this plan, action may be taken at any such meeting only upon a majority vote of the members voting provided such vote represents not less than 70 percent of the total New Hampshire automobile insurance premiums written on a direct basis during the latest reported calendar year by all members voting in person or by proxy.

(g) Members may be represented at any meeting by proxy. Members may record their vote by mail on written propositions and such votes shall have the same standing as if cast by such member in person or by proxy.

(h) Minutes of all meetings of the facility and of the board shall be sent to all members and to the commissioner.

Ins 1406.15 Statistical Data. Each member shall furnish or cause to be furnished such statistics in connection with insurance subject to the facility as may reasonably be required by the board, or commissioner, and each member agrees to permit its statistical agent to release any such data as may be requested by the board. Such statistics shall be furnished at such times and in such form and detail as may be required by the board or the commissioner.

Ins 1406.16 Cessions.

(a) A member shall cede all terms and provisions of any policy of insurance covering private passenger automobiles which is ceded to the facility, up to the limits of coverage and the limit on cession provided in this plan.

(b) Private passenger automobile insurance 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 shall be at least equal to bodily injury liability limits;

(6) Physical damage, loss of use or damage to automobiles on an actual cash value basis with the use of the standard 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 will be effective only as follows:

(1) 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, such policy may be ceded by a member effective date as of the effective date of the policy provided written notice of cession is received by the facility within 60 days of said effective date, otherwise the cession shall be effective on the date written notice is received by the facility. 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;

a. 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, such policy may be ceded by a member as of the policy effective date provided the policy meets the cession eligibility requirements stated in 1406.16(h) and:

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

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

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

(ii) 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 agent initially intended to cede the policy, otherwise the cession shall be effective on the date the notice of cession is received by the facility.

b. 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 or moved to a different company or tier subsequent to the policy effective date

shall be the facility premium or new company or tier premium retroactive to the policy effective date;

c. However, if the insured elects not to accept the offer made in the notification of change as required by 1406.16(i) 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. Any return premium from this cancellation request shall be pro rata with no short rate penalty;

d. With respect to a replacement policy as defined in 1401.01(k), 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;

(2) 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;

(3) 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

(4) No renewal policy shall be ceded to the facility on or after January 1, 1992 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 rate 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) As used in this part, the term "accident" shall mean "occurrence" where the coverage is written on such basis;

(g) A motor vehicle report must 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 chargeable SDIP points.

(h) No policy shall be ceded to the facility solely because of age, place or area or residence, race, color, creed, national origin, marital status or lawful occupation. In addition, no policy shall be ceded to the facility unless such policy has at least one SDIP point.

(i) No cession of a new policy or movement of a new policy from one company to another within a group of affiliated companies or the movement of a new policy to a different tier within one company resulting in a higher rate for the insured or the replacement of a policy by a replacement policy shall be initiated after the 60th day following the policy effective date of the policy

and shall not be effective unless 15 days written notice is mailed to the insured. Such notice shall include the terms and premiums for coverage.

Ins. 1406.17 Facility Charges, Premiums, and Allowances Applicable With Respect to Business Effective Prior to January 1, 1983.

(a) Each member ceding a policy of automobile insurance covering a private passenger automobile risk to the facility shall correctly complete and submit a notice of cession to the facility for that risk. The facility will debit the member's account in the amount of the member company's loss cost charges.

(b) Each member ceding private passenger automobile risks shall, with respect to losses incurred in connection therewith, subject to the limits of coverage provided in this plan of operation, receive a credit against the sum of such debits, facility loss cost charges, 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 rules 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 substantially in excess of debits for ceded risks shall be entitled to request reimbursement for such excess. Unless the board determines otherwise, the facility shall reimburse the member for such excess within 30 days after approving such request.

(e) Any member which reduces the rate of commission on facility business shall apply the amount of such reductions to reduce the premiums, or the facility shall increase the loss cost charges by the amount of the reduced commissions.

Ins 1406.18 Facility Charges, Premium, and Allowance Applicable With Respect to Business Effective on or After January 1, 1983

(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 is 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 plan of operation, receive a credit against the sum of such debits, 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 rules 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 substantially in excess of debits for ceded risks shall be entitled to request reimbursement for such excess. Unless the board determines otherwise, the facility shall reimburse the member for such excess within 30 days after approving such request.

(e) Each member after January 1, 1992, shall cede to the facility 85 percent of the facility gross premium, less commission allowance, of any policy covering private passenger automobiles which is ceded to the facility.

(f) The maximum commission allowance which may be credited against the premium ceded to the facility after January 1, 1992, 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.

(g) Facility surcharge shall be applied as follows:

(1) Each member shall also cede to the facility 85 percent of the surcharge amounts less commission allowance according to the facility SDIP points chargeable in accordance with the provisions of 1406.18(h) below to the ceded policy in accordance with the following schedule:

a. For a policy subject to (1) facility SDIP point	\$ 90
b. For a policy subject to (2) facility SDIP point	200
c. For a policy subject to (3) facility SDIP point	330
d. For a policy subject to (4) facility SDIP point	480
e. For a policy subject to (5) facility SDIP point	650
f. For a policy subject to (6) facility SDIP point	840
g. For a policy subject to (7) facility SDIP point	1,040
h. For a policy subject to (8) facility SDIP point	1,240
i. For each additional point	200

(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.

(h) The amount to be ceded by a company may be illustrated by use of the following equation. Premium amount to be ceded = facility gross premium - (15 percent facility gross premium + commission allowance) + (85 percent of Safe Driver Incentive Plan Surcharge - surcharge commission).

(i) Facility Safe Driver Incentive Plan elements shall include:

(1) Eligibility on the basis that:

a. The facility plan is applicable to all ceded policies and supersedes any filed and approved Safe Driver Incentive Plan for any member:

(2) Definitions for this purpose are:

a. "Experience period" means the experience period shall be the 3 years immediately preceding the effective date of the policy; except the experience period for assignment of points for speeding convictions shall be the 2 years immediately preceding the effective date of the coverage.

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

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

(4) Driving record points shall be applied as follows:

a. Convictions. Points shall be assigned in accordance with the following for motor vehicle violations for which the applicant or any other operator of the vehicle currently resident in the same household has been convicted during the experience period. Conviction points shall be assigned in addition to any points for accidents. If points are applicable under more than one provision of this subparagraph, points shall be based on the one provision which develops the greatest amount of points.

1. Four points shall be assigned for conviction of;

(i) Homicide or assault arising out of the operation of a motor vehicle; or

(ii) Failure to stop and report when involved in an accident; or

(iii) Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs.

2. Three points shall be assigned for conviction of:

(i) Driving a motor vehicle in a careless or reckless manner; or

(ii) Driving while a license is suspended or revoked; or

(iii) Operating a motor vehicle without the owner's permission or consent; or

(iv) Highway racing; or

(v) Driving to endanger.

3. One point shall be assigned for the second conviction and one point shall be assigned for each additional conviction of any moving traffic violation, other than those listed above. An operator must be convicted of 2 or more moving traffic violations to be assigned points under this section.

(b) Convictions for the following shall not be regarded as moving traffic violations:

1. Any violation of motor vehicle equipment requirements of the motor vehicle and traffic laws except improper lights or inadequate brakes; or

2. Failure to display current license plates or registration stickers or diesel fuel permits provided valid license plates or registration stickers or diesel fuel permits as required are in existence.

3. The following conviction shall be regarded as a moving traffic violation but only after the second conviction:

(i) Non-inspection of a motor vehicle;

4. Failure to sign or have in possession operator's license, chauffeur's license or registration certificates provided valid operator's license, chauffeur's license or registration certificates, as required, are in existence.

c. Points shall be assigned for accidents that occurred during the experience period, involving the applicant or any other operator of the vehicle, currently a resident of the same household. Accident points shall be assigned in addition to any points assigned for convictions.

1. One point shall be assigned for each automobile accident resulting in:

(i) Excess of \$500 in bodily injury, but less than \$5000 in bodily injury; or

(ii) In excess of \$1,000 damage but less than \$10,000 in damage to any property including his own.

2. Two points shall be assigned for each automobile accident resulting in:

(i) Death of any person; or

(ii) \$5,000 or more bodily injury to any person;

or

(iii) \$10,000 or more in damage to any property including his own.

3. Three points shall be assigned for each automobile accident in excess of 2 occurring within the experience period.

d. No point shall be assigned for an accident if the insured demonstrates that the accident occurred under the following circumstances:

1. Automobile lawfully parked, an automobile rolling from a parked position shall not be considered as lawfully parked, but shall be considered the operation of the last operator; or

2. Applicant or other operator residing in the same household, or owner, reimbursed by, or on behalf of, a person responsible for the accident, or has judgment against such person; or

3. Automobile of an applicant or other operator resident in the same household, struck in 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; or

4. 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; or

5. Automobile operated by applicant or other operator resident in the same household is damaged as a result of contact with a "hit and run" driver, if applicant or other operator so reports the accident to the proper authority within 24 hours; or

6. Accidents involving damage by contact with animals or fowls; or

7. Accidents involving physical damage, limited to and caused by flying gravel, missiles, or falling objects; or

8. 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, this exception does not include an accident occurring after the emergency situation ceases or after the private passenger automobile ceases to be used in response to such emergency; or

9. Automobile accident involving only personal 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.

e. If the principal operator of the automobile has no surcharge for an accident, but has been licensed less than 2 years, one point is assigned.

(5) All changes requiring adjustments of premium shall be computed pro-rata. Changes which occur during the term of the policy shall be calculated using the rates on the inception date of the policy. Policies having no fixed expiration date shall be considered to have a 12-month term.

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

(1) Beginning January 1, 1992, each member shall cede no more than 15 percent of its business.

(2) Beginning January 1, 1993, each member shall cede no more than 10 percent of its business.

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

(4) Each member's cessions shall be calculated based on a fiscal year of January 1 to December 31. The cession date shall be determined by the effective date of the policy ceded.

Ins 1406.19 Assessments and Participation Applicable With Respect to
Business Effective Prior to January 1, 1983.

(a) Facility expenses, profits, or losses arising from business effective prior to January 1, 1983, shall be allocated among the members in the manner provided under this section.

(b) Assessments to pay for facility losses and expenses shall be levied, and any profits shall be distributed, as frequently as the board deems necessary. Such assessments or distributions shall be allocated among the members based on New Hampshire business in accordance with the following:

(1) Each member's allocated share of assessments or distributions with respect to private passenger automobile insurance (other than physical damage) shall be that proportion that its respective total private passenger (other than physical damage) net direct written car years bear to the total of such car years (other than physical damage) of all members in this state.

(2) Each member's allocated share of assessments or distributions with respect to private passenger automobile physical damage insurance shall be that proportion that its respective total private passenger automobile physical damage net direct written car years bear to the total of such car years of all members in this state.

(3) All costs, charges, expenses and liabilities and all income, property and other assets which the board determines not to be properly chargeable to the profit or loss of ceded risks shall be shared by the members in the respective proportions that each member's total private passenger net direct written car years for the most recent available calendar year bear to the total of such car years for all members.

Ins 1406.20 Assessments and Participation Applicable With Respect to
Business Effective on or After January 1, 1983

(a) Facility earned premiums, incurred losses, income and expenses shall be determined on the basis of generally accepted insurance accounting principles

as incorporated in the annual statement blank which the commissioner furnishes casualty insurers. The Plan of Operation shall provide that all investment income from the premium on business reinsured by the facility shall enter into the determination of the results of operations. The facility shall provide periodic settlement to the members for assumed business on the basis. 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, as frequently as the board deems necessary. Such assessments or distributions shall be allocated among the members based on New Hampshire business in accordance with the following:

(1) Assessments for private passenger automobile insurance, other than physical damage, prior to January 1, 1992 shall be shared amongst the members as follows:

a. Fifty percent of all facility profits or losses shall be allocated to each member in that proportion that its respective total private passenger net direct written car years bear to the total of such car years of all members in this state;

b. Fifty percent of all facility profits or losses shall be allocated to each member in that proportion that its cessions of private passenger automobile insurance are of all members cessions to the facility of private passenger automobile insurance. Cessions shall be measured by car years;

(2) Assessments for private passenger automobile physical damage insurance prior to January 1, 1992 shall be shared amongst the members as follows:

a. Fifty percent of all facility profits or losses shall be allocated to each member in that proportion that its respective total private passenger net direct written car years bear to the total of such car years of all members in this state;

b. Fifty percent of all facility profits or losses shall be allocated to each member in that proportion that its cessions of private passenger automobile insurance are of all members cessions to the facility of private passenger automobile insurance. Cessions shall be measured by car years.

(3) Assessments of facility net operation expense prior to January 1, 1992 shall be shared amongst the members as follows:

a. Fifty percent of all assets, liabilities, income and expenses not properly chargeable to the profit or loss of ceded risks shall be shared by the members in the respective proportions that each member's total private passenger net direct written car years for the most recent available calendar year bear to the total of such car years for all members;

b. Fifty percent of all assets, liabilities, income and expenses not properly chargeable to the profit or loss of ceded risks shall be shared by the members in the respective proportions that each member's total cessions are to all members total cessions to the facility. Cessions shall be measured by car years.

(4) Assessments for private passenger automobile insurance, other than physical damage, between January 1, 1992 and December 31, 1992 shall be shared amongst the members as follows:

a. Thirty-five percent of all facility profits or losses shall be allocated to each member in that proportion that its respective total private passenger net direct written car years bear to the total of such car years of all members in this state;

b. Sixty-five percent of all facility profits or losses shall be allocated to each member in that proportion that its cessions of private passenger automobile insurance are of all members cessions to the facility of private passenger automobile insurance. Cessions shall be measured by car years.

(5) Assessments for private passenger automobile physical damage insurance January 1, 1992 and December 31, 1992 shall be shared amongst the members as follows:

a. Thirty-five percent of all facility profits or losses shall be allocated to each member in that proportion that its respective total private passenger automobile physical damage net direct written car years bear to the total of such car years of all members in this state;

b. Sixty-five percent of all facility profits or losses shall be allocated to each member in that proportion that its cessions of private passenger automobile physical damage insurance are of all members cessions of private passenger automobile physical damage insurance cessions in the facility. Cessions shall be measured by car years.

(6) Assessments of facility net operation expense between January 1, 1992 and December 31, 1992 shall be shared amongst the members as follows:

a. Thirty-five percent of all assets, liabilities, income and expenses not properly chargeable to the profit or loss of ceded risks shall be shared by the members in the respective proportions that each member's total private passenger net direct written car years for the most recent available calendar year bear to the total of such car years for all members;

b. Sixty-five percent of all assets, liabilities, income and expenses not properly chargeable to the profit or loss of ceded risks shall be shared by the members in the respective proportions that each member's total cessions are to all members total cessions to the facility. Cessions shall be measured by car years.

(7) Assessments for private passenger automobile insurance, other than physical damage, beginning January 1, 1993 shall be shared amongst the members as follows:

a. Twenty percent of all facility profits or losses shall be allocated to each member in that proportion that its respective total private passenger net direct written car years bear to the total of such car years of all members in this state;

b. Eighty percent of all facility profits or losses shall be allocated to each member in that proportion that its cessions of private

passenger automobile insurance are of all members' cessions to the facility of private passenger automobile insurance. Cessions shall be measured by car years;

(8) Assessments for private passenger automobile physical damage insurance beginning January 1, 1993 shall be shared amongst the members as follows:

a. Twenty percent of all facility profits or losses shall be allocated to each member in that proportion that its respective total private passenger automobile physical damage net direct written car years bear to the total of such car years of all members in this state;

b. Eighty percent of all facility profits or losses shall be allocated to each member in that proportion that its cessions of private passenger automobile physical damage insurance are of all members' cessions of private passenger automobile physical damage insurance cessions in the facility. Cessions shall be measured by car years;

(9) Assessments of facility net operation expense beginning January 1, 1993 shall be shared amongst the members as follows:

a. Twenty percent of all assets, liabilities, income and expenses not properly chargeable to the profit or loss of ceded risks shall be shared by the members in the respective proportions that each member's total private passenger net direct written car years for the most recent available calendar year bear to the total of such years for all members; and

b. Eighty percent of all assets, liabilities, income and expenses not properly chargeable to the profit or loss of ceded risks shall be shared by the members in the respective proportions that each member's total cessions are to all members total cessions to the facility. Cessions shall be measured by car years.

(c) For purposes of determining participation ratios, private passenger liability net direct written car years and all other motor vehicle insurance premiums ceded to the facility by a member as designated agent business pursuant to Ins 1406.13(1) shall not be included.

Ins 1406.21 Special Rules for Designated Private Passenger Automobile Insurance.

(a) The following special rules apply to designated private passenger automobile business and shall supersede all other rules only insofar as there is a conflict:

(1) The designated carriers shall cede to the facility all business written by designated agents. Such cessions shall not enter into the utilization calculations of the designated carrier;

(2) All assessments of facility profits and losses for business written pursuant to Ins 1406.13(1) and (m) shall be made pursuant to Ins 1406.20(b)(1)a., (b)(2)a., and (b)(3);

a. It is the purpose of this subparagraph that that portion of designated carrier business which is written through designated agents shall not be made subject to the utilization provisions in Ins 1406.20.

(3) Every designated carrier shall be credited with uniform ceding and claims expense allowance on premium written by designated agents even though the carriers' allowances for other business ceded to the facility may be lower. These allowances shall be established by the board of governors.

Ins. 1406.22 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 to this plan 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 this plan.

(b) The board shall establish and supervise procedures for the review of claim practices of members. Each member is required to adjust losses for ceded business fairly and efficiently in the same manner as voluntary business losses and to effect settlement where settlement is appropriate.

(c) The facility shall be subject to examination at the facility's expense by the commissioner at any time, in such detail and with respect to such aspects of its operation as the commissioner shall determine.

Ins 1406.23 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 against all judgments, fines, amounts paid in settlement, reasonable costs and expenses including attorney's fees and any other liabilities that may be incurred as a result of such action, suit or proceeding, or threatened action, suit or proceeding, except in relation to matters as to which he or it shall be 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 his or its duties or obligations to the facility and, with respect to any criminal actions or proceedings, except when such person or member had reasonable cause to believe that his or its conduct was unlawful. 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 and whether or not any such liability is incurred prior to the adoption of this plan. Such 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. 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.

(b) In each instance in which a question of indemnification arises, entitlement thereto, pursuant to the conditions set forth in the first paragraph of this section, shall be determined by the board which shall also determine the time and manner of payment of such indemnification; provided, however, that 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 in the first paragraph of this section shall be entitled to indemnification as authorized in such paragraph. Nothing herein shall be

deemed to bind a person or member who or which the board has determined not be entitled to indemnification, or to preclude such person or member from asserting the right to such indemnification by legal proceedings. Such indemnification as is herein provided shall be apportioned among all members, including any named in any such action, suit or proceeding, pursuant to this plan.

Ins 1406.24 Hearings and Review.

(a) Any person aggrieved with respect to the operation of the facility may request a formal hearing and ruling by the board on any alleged failure to comply with the plan or any alleged improper act or ruling in the administration of the facility. The request for hearing must be made within 30 days after the date of the alleged violation or improper act or ruling. The hearing shall be held within 30 days after the receipt of the request. Except as may be otherwise provided by the board the hearing shall be held by a panel appointed by the chairman consisting of 3 board members entitled to vote. The ruling of a majority of the panel shall be deemed to be the formal ruling of the board unless the full board on its own motion shall modify or rescind the panel's action.

(b) Any formal board ruling may be appealed to the commissioner by filing notice of appeal with the facility and commissioner within 30 days after the date of the ruling's issuance. The commissioner shall issue an order approving or disapproving the action or decision, or directing the board to reconsider the ruling.

(c) Any aggrieved member may request a public hearing and ruling by the commissioner on the provisions of the plan, rules, or regulations approved by the commissioner. 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 hearing held by the board pursuant to this section, the board shall issue a ruling or order within 30 days after the hearing. 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 plan are subject to judicial review as provided in RSA 400-A:24.

Ins 1406.25 Amendments.

(a) The plan may be amended by the commissioner at any time pursuant to the provisions of RSA 541-A.

(b) Amendments to this plan may be proposed at any annual meeting of the facility or at any special meeting called for that purpose. Not less than 15 days written notice of any such meeting shall be given, or cause to be given by the chairman of the board, in which notice the action proposed to be taken shall be fully set forth. No amendments proposed by the members shall become effective unless approved by the commissioner and after notice and hearing as provided in RSA 541-A:3.

Ins 1406.26 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.

PART Ins 1407 RESIDENCY REQUIREMENTS FOR AUTOMOBILE INSURANCE

Ins 1407.01 Statement of Residency or Exemption for Purpose of
Obtaining Automobile Insurance.

(a) As used in this section, "policy for automobile insurance" means a policy delivered or issued for delivery 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 as defined in rule Ins 1406.02(k).

(b) "Renewing a policy" means the first policy renewal only which is notice on or after January 1, 1993.

(c) "Resident" means:

(1) A person who maintains his or her true, fixed and permanent residence within the state of New Hampshire and does not claim a residency in any other state for any purpose; or

(2) A person who maintains a permanent place of abode in New Hampshire for the entire year and has actually spent more than 183 days in New Hampshire during the previous year.

(d) "Statement of exemption" means:

(1) The motor vehicle to be insured is garaged exclusively in New Hampshire; or

(2) The applicant is on active duty in the military service of the United States, and currently stationed in New Hampshire and the vehicle to be insured is currently garaged in this state.

(e) Prior to issuing or renewing a policy of automobile insurance, insurers shall provide to each applicant, and shall require each applicant to sign and date, a statement of residency or statement of exemption which statement will be relied upon in connection with future renewals of the automobile insurance policy for which the applicant is applying, and that it is the responsibility of the applicant to inform their insurance company if they cease to be a New Hampshire resident; and which statements shall be substantially in the following form:

Statement of Residency or Exemption for purpose
of obtaining automobile insurance (RSA 417-A:3-b).

I. Statement of Residency. To procure automobile insurance, I hereby attest that I am a resident of the State of New Hampshire. I understand that if I falsely claim to be a resident of the State of New Hampshire, I am subject to prosecution, imprisonment of up to one year and a fine of \$2,000.

II. Definition of Resident:

(a) A person who maintains his or her true, fixed and permanent resident within the State of New Hampshire and does not claim a residence in any other state for any purpose; or

(b) A person who maintains a permanent place of abode in New Hampshire for the entire year and has actually spent more than 187 days in New Hampshire during the previous calendar year.

Date:

Signature

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III. Statement of Exemption. I hereby claim exemption from the residency requirement because (check one):

The motor vehicle to be insured is garaged exclusively in New Hampshire; or

I am on active duty in the military service of the United States, am currently stationed in New Hampshire and the vehicle to be insured is currently garaged in this state.

I understand that this document will be relied upon in connection with future renewals of the automobile insurance policy for which I am applying, and that it is my responsibility to inform my insurance company if I cease to qualify for this exemption.

Date:

Signature

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