

Notice Number 2020-92

Rule Number Ins 1400

1. Agency Name & Address:

**NH Insurance Department
21 S. Fruit Street, Suite 14
Concord, NH 03301**

2. RSA Authority: **RSA 400-A:15, I; RSA 404-C:1;
RSA 412:43; RSA 417-A:9**

3. Federal Authority: _____

4. Type of Action:

Adoption **X**

Repeal _____

Readoption **X**

Readoption w/amendment **X**

5. Short Title: **Automobile Insurance**

6. (a) Summary of what the rule says and of any proposed amendments:

Chapter Ins 1400 regulates automobile insurance in the voluntary market as well as the automobile reinsurance facility by establishing definitions; criteria for moving a policy into the voluntary market versus the reinsurance facility; rating plans and practices; residency requirements; and by setting forth the plan for the operation of the reinsurance facility.

This proceeding proposes to readopt with amendment various sections of Chapter Ins 1400, readopt those sections that have no changes, and adopt new Part Ins 1407, entitled “Waiver of Rules”. The proposed amendments clarify definitions, simplify language, change facility board membership to recognize group mergers, change their meetings to biennial, simplify the resident definition in Form INS 1, entitled “Statement of Residency Including Applicable Exemptions”, and make grammar, punctuation, formatting, and spelling corrections throughout.

6. (b) Brief description of the groups affected:

Any entities that write automobile insurance in New Hampshire.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	State Statute the Rule Implements
Ins 1401.01	RSA 400-A:15, I; RSA 404-C; RSA 412; RSA 417-A
Ins 1401.02	RSA 400-A:15, I; RSA 404-C; RSA 412; RSA 417-A
Ins 1401.03	RSA 264; RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1402.01	RSA 400-A:15, I; RSA 412:1; RSA 412:43; RSA 417-A; RSA 404-C:1
Ins 1402.02	RSA 259:61, I; RSA 261:52-b; RSA 261:52-c; RSA 264:18, VI; RSA 404-C; RSA 400-A:15, I; RSA 412:3; RSA 412:43
Ins 1402.03	RSA 259; RSA 264:3; RSA 400-A:15, I; RSA 412:43; RSA 417-A:1; RSA 417-A:3; RSA 417-A:4; RSA 417-A:5
Ins 1402.04	RSA 400-A:15, I; RSA 412; 412:43; RSA 417-A:3; RSA 417:4, VIII(e)
Ins 1402.05	RSA 264; RSA 400-A:15, I; RSA 404-C; RSA 412:43;

Ins 1403.01	RSA 400-A:15, I; RSA 412:3, RSA 412:15; RSA 412:16; RSA 412:43
Ins 1403.02	RSA 400-A:15, I; RSA 412:15; RSA 412:16; RSA 412:43
Ins 1403.03	RSA 400-A:15, I; RSA 412:16; RSA 412:43
Ins 1404.01	RSA 400-A:15, I; RSA 400-B:4; RSA 412:38, II.; RSA 412:43
Ins 1405.01	RSA 400-A:15, I; RSA 404-C:1; RSA 412:1; RSA 412:43; RSA 417-A
Ins 1405.02	RSA 215-A; RSA 259:48; RSA 259:61, I; RSA 261:52-b; RSA 261:52-c; RSA 264:18; RSA 400-A:15, I; RSA 404-C; RSA 412:3; 412:43; RSA 417-A
Ins 1405.03	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.04	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.05	RSA 264; RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.06	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.07	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.08	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.09	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.10	RSA 400-A:15, I; 404-C; 412:43; RSA 417:4 VIII(e)
Ins 1405.11	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.12	RSA 264:33; RSA 265:105-a; RSA 400-A:15, I; RSA 404-C; RSA 412:6; RSA 412:43;
Ins 1405.13	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.14	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.15	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.16	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.17	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.18	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.19	RSA 400-A:15, I; RSA 404-C; RSA 412:15; RSA 412:16; RSA 412:43
Ins 1405.20	RSA 400-A:15, I; RSA 404-C; RSA 412:43; RSA 417-A
Ins 1406.01	RSA 400-A:15, I; RSA 404-C; RSA 412:43; RSA 417-A:3-b
Ins 1407.01	RSA 400-A:15, I; RSA 541-A:22, IV
Appendix I	RSA 261:52-b; RSA 261:52-c; RSA 400-A:15, I; RSA 404-C; RSA 412:43; RSA 417-A:3-b;

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Emily Doherty	Title:	P&C Attorney
Address:	NH Insurance Department 21 S. Fruit Street, Suite 14 Concord, NH 03301	Phone #:	271-4843
		Fax#:	271-1406
		E-mail:	Emily.Doherty@ins.nh.gov
		TTY/TDD Access:	Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **December 8, 2020**

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, December 1, 2020 at 10:30 am**

Place: **This will be a remote hearing, accessed through the following link:
<https://nhgov.webex.com/webappng/sites/nhgov/meeting/download/2cb071c44f674abb8583e027c432d1a9?siteurl=nhgov&MTID=macb099321e463f77ce8859d716fd34a2>
To phone in: 1-415-655-0001, Access code: 172 769 9072**

If there are any issues with gaining access, please call: 271-2805

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 20:089, dated 10/23/2020

1. **Comparison of the costs of the proposed rule(s) to the existing rule(s):**

There is no difference in cost when comparing the proposed rules to the existing rules
Not applicable to Ins 1407 which is a new part.

2. **Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds.

3. **Cost and benefits of the proposed rule(s):**

New part ins 1407 regarding waiver of rules will not result in any additional cost or benefit.

A. **To State general or State special funds:**

None.

B. **To State citizens and political subdivisions:**

None.

C. **To independently owned businesses:**

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

This proposal does not mandate any new, expanded, or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivisions, and therefore does not violate Part I, Article 28-a of the New Hampshire Constitution.

Readopt with amendment Ins 1401 and Ins 1402, effective 7-1-12 (Document #10153), cited and to read as follows:

NOTE TO JLCAR: The JLCAR last approved Ins 1400 as a whole in 2012 as a conditional approval of FP 2012-49, after a Department request. In the CA request for 2012-49, JLCAR staff had made quite a few comments that ended with notifications that 1) the rules had been approved once or twice before, primarily in 2004 and 1993, or 2) the Department indicated the language was necessary to meet federal and/or industry standards. Since the Committee conditionally approved them under those circumstances, as well as 2 or 3 time over the last 20-30 years, JLCAR staff has not repeated those clarity comments in FP 2020-92. But see other comment son pages 23 and 24.

Statutory Authority: RSA 400-A:15, I; RSA 404-C:1; RSA 412:43; RSA 417-A:9

PART Ins 1401 PURPOSE, SCOPE AND SERVICE REQUIREMENTS FOR THE VOLUNTARY MARKET AND THE NEW HAMPSHIRE AUTOMOBILE REINSURANCE FACILITY

Ins 1401.01 Purpose. The purpose of this chapter is to:

- (a) Establish rules and guidelines in order to ensure that primary automobile insurance is readily available to citizens of the state of New Hampshire at rates and premiums which are adequate, reasonable, and not unfairly discriminatory;
- (b) Provide rules and structure for the New Hampshire automobile reinsurance facility; and
- (c) Ensure all insurers authorized to write automobile insurance in this state issue to any eligible risk a policy of automobile insurance covering private passenger automobiles.

Ins 1401.02 Scope. This chapter shall apply to all insurers authorized to write automobile insurance in this state.

Ins 1401.03 **Service.**

Edit. Ins 1401.03 should be in its own Part (Ins 1402) because purpose and scope should be at the beginning of the Chapter in the first Part by themselves. Ins 1401.03 is a substantive requirement on service, not a purpose or scope. See §3.2 of Ch. 4 of *Manual*.

(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.

(b) Every participating insurer and producer 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.

(c) 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 and as required under the provisions of Ins 1402.03(a).

Edit: Underline the section heading (here and subsequently).

PART Ins 1402 THE WRITING OF AUTOMOBILE INSURANCE IN THE VOLUNTARY MARKET

Ins 1402.01 **Purpose.** This part establishes the rules and guidelines that foster a competitive and dynamic private passenger automobile insurance market with products readily available to residents of the state of New Hampshire at rates and premiums which are adequate, reasonable, and not unfairly discriminatory.

Ins 1402.02 **Definitions Applicable to the Voluntary Market.**

(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) "Commissioner" means the commissioner of insurance.

(c) "Eligible risk" means a person who has signed a residency statement pursuant to RSA 417-A:3-b and Ins 1406.01.

(d) "Experience period" means the time period of 3 years immediately preceding the effective date of the policy.

(e) "Exposure" means the rating units on which insurance premium is based. For automobile insurance, exposure unit means one car insured for one 12-month period.

(f) "Insurer" means a licensed company, or group of affiliated companies, that are authorized to transact automobile insurance in the state of New Hampshire and, if a group of companies, are affiliated by ownership or contractual relationship encompassing joint operations or processes filed and approved by the commissioner.

(g) "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.

(h) "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 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.

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

(j) "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.

(k) "Policy period" means that period of time set forth in the policy itself during which the policy is to remain in effect or, if the policy contains no fixed expiration date, policy period means 12 months.

(l) "Private passenger automobile" means any motor vehicle as defined in (h) above.

(m) "Prospective loss cost" means the expected average loss per unit of exposure.

Edit: Suggestion: Rewrite (k) as 2 subparagraphs as follows: "Policy period", means: (1) The 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.

(n) "Rate" means that cost of insurance per exposure unit whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premiums.

Edit: ". The term"

(o) "Rating plan" means a system by which insurers establish a premium or rate to be charged for insurance coverage.

(p) "Renewal" or "to renew" 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.

(q) "Replacement policy" means a policy that a company issues to replace a voluntary policy for the purpose of ceding the insured to the facility or moving the insured to a higher rated company or tier.

(r) "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 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

Edit: Delete extra blank line.

(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.

(s) "Supplementary rate information" means any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, and any other similar information needed to determine an applicable rate in effect or to be in effect.

(t) "Supporting information" means:

- (1) The experience and judgment of the filer and the experience or data of other insurers or organizations relied upon by the filer;
- (2) The interpretation of any statistical data relied upon by the filer;
- (3) A description of methods used in making the rates; and
- (4) Other similar information relied upon by the filer.

(u) "Tier" means a level or division of a company's or group's rating system that will yield a separate and distinct rate for automobile insurance.

(v) "Underwriting guidelines" mean:

- (1) Any written mechanism developed as an aid in the selection, placement or tiering of private passenger automobile risks; and
- (2) The portion of the rate classification system submitted to the commissioner pursuant to RSA 412:16.

(a) Insurers shall make the same coverage and limits available to each applicant or insured, regardless of tier or company placement, up to the maximum coverage options available in the facility shown under Ins 1405.10 (a), unless the insurer's maximum available underlying limits, or reinsurance contracts, preclude it from offering such coverage and limit options. The limits of liability shall not be provided at different amounts within the same policy of automobile insurance unless permitted by RSA 259 or RSA 264.

(b) Insurers shall not claim that suspension or revocation of an insured's driving privileges are grounds for asserting that coverage has been forfeited under the provisions of RSA 264:3 or cancelled under RSA 417-A:4, when the suspension or revocation can be directly attributed to the insurer's failure to file the necessary certification in compliance with RSA 264.

(c) Insurers shall establish and maintain a system by which each automobile policy cancellation, other than for nonpayment of premium, and each nonrenewal, other than at the insured's request, is recorded together with the specific reason for the cancellation or nonrenewal. Cancellation reasons such as "for underwriting reasons" or "does not meet underwriting requirements" are lacking in specificity and shall not be sufficient reasons for compliance with the provisions of RSA 417-A:5.

(d) For the purposes of this section, and to comply with the provisions of RSA 417-A:1 II., if the policy of automobile insurance provides for a policy period of less than 12 months in duration, the policy period means 12 months.

(e) Insurers shall not penalize producers in any way for submitting applications for a policy of automobile insurance to such insurer. A pattern of agency terminations by an insurer shall be deemed evidence of an intent by an insurer to circumvent RSA 417-A:3.

(f) Insurers shall not void or cancel a policy back to its inception date, unless permitted by law.

Ins 1402.04 Movement or Placement of a Policy in the Voluntary Market.

(a) A new business applicant shall not be placed into a program or tier solely because of any of the factors cited in RSA 417-A:3 and RSA 417:4, VIII(e).

(b) No insurer shall move a policy to a different tier within one company, or from one company to another within a group, which results in a different rate for the insured unless it does so in accordance with its underwriting guidelines filed with the commissioner in accordance with the provisions of RSA 412.

(c) A member of affiliated companies may refuse to write, cancel, or refuse to renew a policy consistent with RSA 417-A and with its filed underwriting guidelines so long as the member provides the applicant or insured with the ability to immediately obtain a policy from another member of the affiliated companies. If the member cancels or refuses to renew, the replacement offer and terms shall be delivered or mailed together with the notice of cancellation or nonrenewal.

Edit: "shall be"

(d) The movement of a policy from one company to another within an insurance group or the movement of a policy to a different tier within one company is permitted within the first 60 days of the initial policy period if the movement is consistent and in compliance with the company's filed underwriting guidelines, otherwise such movement shall only occur on the renewal date of the policy and shall require a 45-day written notice of such action to the policyholder. The replacement offer and terms shall be delivered or mailed together with the notice of cancellation or nonrenewal.

(e) The following shall not be used or considered in any rating plan or set of underwriting criteria:

Edit: New sentence should begin here.

(1) The following occurrences or instances:

- a. Where 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. Where 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. Where 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 connected therewith;
- d. Where 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. Where 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; or
- i. 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.

Edit. "residing in".

Edit: semi-colon

(2) Lack of prior insurance in the following instances:

- a. Applicants who were previously listed on a family member's policy;
- b. Applicants who are newly licensed operators;
- c. Applicants who have had, within the past 30 days, use of an insured company vehicle; or
- d. Applicants who are returning military personnel; or

(3) A requirement of continuous employment.

Ins 1402.05 **Evidence of Financial Responsibility.** The insurer shall protect the driving privileges of its insureds 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.

Readopt with amendment Ins 1403.01, effective 7-1-12 (Document #10153), cited and to read as follows:

Edit: Use bold (here and subsequently).

PART Ins 1403 VOLUNTARY ~~MARKET REGULATION PERTAINING TO~~ RATES, RATING PLANS AND PRACTICES

Ins 1403.01 **Rating and Rating Plans.**

Edit: "can"

(a) Insurers shall establish a system of base rates, risk classifications and accompanying factors, other modifications and factors which ~~may~~ reflect individual characteristics of the insured and coverage choices, and underwriting or tiering rules by which individuals are placed in affiliated companies, marketing tiers, or programs.

(b) The entire rating plan and accompanying rates and factors shall be justified actuarially and filed with the commissioner. If the insurer is relying upon a credit report or insurance scoring system or model as defined in Ins 3300 to underwrite or rate any applicant or person inquiring about insurance, or re-underwrite or re-rate any existing class or subclass of insureds, the insurer shall, before its use on any consumer risk, file the credit scoring system with the commissioner pursuant to all rules stated in Ins 3300.

(c) A rating plan shall consist of any or all of the following:

- (1) Schedules of base rates and rates or factors for optional coverage choices;
- (2) Risk classification system and accompanying factors, relativities, or charges;
- (3) Modification factors, discounts, or surcharges reflective of individual risk experience or behavior;
- (4) Pricing algorithms or rating steps used to establish final premium;
- (5) Underwriting guidelines to the extent that they differentiate risks, with the result being different rates or premiums charged to one insured compared to another;
- (6) Credit scoring mechanisms and scoring models relied upon in underwriting, risk classification, or rating; and
- (7) Standards applied to insureds governing placement in affiliated companies within a group, or tiers within a single company, resulting in different rates or premiums being charged for one insured versus another.

Readopt Ins 1403.02, effective 7-1-12 (Document #10153), as amended effective 1-7-19 (Document #12704), to read as follows:

Ins 1403.02 **Rating Practices.**

(a) Insurance companies shall not make premium changes to an automobile policy during the policy period in the voluntary market 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.

(b) Changes which occur during the policy period shall be calculated using the rates in effect at the beginning of the policy period.

Edit. Place in quotes.

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

(d) For the purposes of this section, if the policy of automobile insurance provides for a policy period of less than 12 months, then **policy period** means the period of time set forth in the policy itself.

(e) Insurers shall not rate a person as an operator resident in the same household if the named insured swears in an affidavit that the alleged operator is, in fact, not a resident in the same household. It shall be the responsibility of the named insured to inform their insurance company at renewal if the residency information contained in the affidavit ceases to be correct.

Readopt with amendment Ins 1403.03, effective 7-1-12 (Document #10153), to read as follows:

Ins 1403.03 **Reflecting Driver Performance.**

(a) Rating systems or rating plans used by insurers shall include means by which insureds are credited with good driving experience or surcharged to reflect certain loss and violation history.

(b) Every insurer shall clearly provide on, or attached to, the renewal notice or declaration page of each policy delivered to the insured an indication that discounts, credits, or surcharges are included in the premium charge. Any insurer unable to provide a listing with sufficient detail showing occurrences and violations which have impacted the premium shall, at a minimum, indicate that the insured may contact the producer or insurer for more specific information.

(c) Insurers shall clearly identify within their filed rating plans and guidelines specifics with respect to the types of violations and occurrences which impact an insured's premium and the means by which this is accomplished.

Readopt with amendment Ins 1404 through Ins 1406, effective 7-1-12 (Document #10153), to read as follows:

Edit: "Readopt Ins 1404, effective 7-1-12 (Document #10153), to read follows:"

PART Ins 1404 **RECORD RETENTION PROCEDURES IN THE VOLUNTARY MARKET AND THE NEW HAMPSHIRE AUTOMOBILE REINSURANCE FACILITY**

Ins 1404.01 **Record Retention Procedures.**

(a) Insurers shall establish a system or procedure that shows the re-tiering of an automobile policy between rating tiers. A cancellation or nonrenewal with concurrent writing of another policy shall be deemed re-tiering for purposes of this rule. Each insurer shall track the re-tiering of an automobile policy for a minimum of the current policy year plus 5 years from the effective date of the current in force policy.

(b) Insurers shall maintain for a period of the current policy year plus 5 years a record retrieval system of all company refusals to write insurance coverage and all company-initiated cancellations and non-renewals of insurance policies and the factual reasons for the refusal to write, cancellation, or non-renewal.

Edit: "hyphen"

(c) Companies writing insurance in this state shall maintain all underwriting and rating documentation from which any premium charge is developed. Such documentation shall in all cases include the underlying factual basis which supports the premium charge developed, not merely the underwriting or rating conclusion drawn from such facts, and be retained in a manner so that the commissioner can readily ascertain during an examination the insurer's compliance with its filed and approved rates, rating plans, underwriting models, and state insurance laws and rules. These records shall be retained for the current year plus 5 years.

Edit: "is"

PART Ins 1405 ~~PLAN OF OPERATION FOR THE NEW HAMPSHIRE~~ AUTOMOBILE REINSURANCE FACILITY

Edit: "Readopt with amendment Ins 1405 - 1406, effective 7-1-12 (Document #10153), to read follows:"

Ins 1405.01 **Purpose.** The purpose of this part shall be:

(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 1405.02 **Definitions.**

Edit: "hyphen"

(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 has signed a residency statement pursuant to RSA 417-A:3-b and Ins 1406.01 and who 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 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.

Edit. Suggestion: Revise Ins 1405.02(u) as follows: *"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.*

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(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 that period of time set forth in the policy itself during which the policy is to remain in effect or, if the policy contains no fixed expiration date or if the policy provides for a policy period of less than 12 months in duration, policy period means 12 months.

(v) "Private passenger automobile" means any motor vehicle as defined in (q) above.

(w) "Renewal" or "to renew" 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:

Edit. Define one term.

(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 1405.03 **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 1405.04 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 will be effective at 12:01 A.M. on the day following receipt of the application by the insurer.

Edit: "shall"

Ins 1405.05 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 1405.06 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 1405.07 Board of Governors.

Edit: "(board)"

(a) The commissioner shall appoint a board of governors, hereinafter referred to as the 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 1405.08 **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 **may** not appoint more than one company in its class of companies to execute a proxy.

Edit: "shall"
- (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 1405.09 **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 1405.10 **Cessions.**

Edit: A new paragraph "(b)" begins here. Renumber current paragraphs "(b)" through "(i)" as "(c)" through "(j)".

(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). 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.

(b) 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 Edit: "hyphen" to accept the offer made in the notification of change as required by Ins 1405.10 (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 1405.02(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.

(c) 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.

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

(e) 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.

(f) 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).

(g) 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.

(h) 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.

(i) 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 1405.11 **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 1405.13 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 1405.12 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 1405.13 **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 1405.14 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 1405.15 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 may be incurred as a result of such action, suit, or proceeding, or threatened action, suit, or proceeding.

Edit: "might"

(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 1405.16 **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 1405.07(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 1405.17 **Amendments.**

Edit: Delete comma.

(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 1405.18 **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 1405.19 **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 1405.20 **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.

Note to JLCAR: Form INS 1 does not appear to be a “form” as defined in RSA 541-A:1, VII-a, because the required info is not provided to the Dept. In any case, RSA 417:A:3-b requires a “form” prescribed by the Dept.

PART Ins 1406 RESIDENCY REQUIREMENTS FOR AUTOMOBILE INSURANCE IN THE VOLUNTARY MARKET AND THE NEW HAMPSHIRE AUTOMOBILE REINSURANCE FACILITY

Ins 1406.01 Statement of Residency Including Applicable Exemptions.

(a) Pursuant to RSA 417-A:3-b, insurers or their producers shall provide to applicants, and shall require applicants to sign and date, form INS 1 Statement of Residency Including Applicable Exemptions (Appendix I) prior to issuing or upon delivery of a policy of automobile insurance.

(b) An exemption from the residency requirement shall be permitted if:

Edit: Delete parentheses and say “in Appendix 1”.

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

(2) The applicant(s) is on active duty in the military service of the United States and claims New Hampshire as their legal state of residence; or

(3) The applicant(s) is on active duty in the military service of the United States, currently stationed in New Hampshire, and all vehicles to be insured on the policy for which application is made are currently garaged in New Hampshire; and

(4) The applicant(s) acknowledge(s) that they shall be subject to prosecution, imprisonment of up to one year, a fine of \$2,000, and the denial of coverage for any loss not occurring in New Hampshire, under the policy for which application is made, should the applicant(s) falsely claim the residency exemption for themselves or any named insured, or fail to notify the insurer at policy renewal should any named insured cease to be eligible for a New Hampshire residency exemption.

(c) Applicant(s) shall supply on Form INS 1 the following information:

(1) If the applicant(s) are filing for residency status:

a. The street address, if applicable;

b. The applicant(s)’ attestations of residency for all named insureds to be insured on the policy for which application is made;

c. The applicant(s)’ statement of obligation to inform their insurance company prior to the next renewal of the policy for which application is made should any named insured cease to be a New Hampshire resident; and

d. The applicant(s)’ acknowledgement that they shall be subject to prosecution, imprisonment of up to one year, a fine of \$2,000, and the denial of coverage for any loss, not occurring in New Hampshire, under the policy for which application is made, should the applicant(s) falsely claim residency for themselves or any named insured, or fail to notify the insurer at policy renewal should any named insured cease to be a New Hampshire resident; or

(2) If the applicant(s) are filing for an exemption, the applicable exemption.

(d) The information contained in Form INS 1 shall be relied upon in connection with future renewals of the automobile insurance policy for which the applicant(s) is applying.

(e) It shall be the responsibility of the applicant(s) to inform their insurance company if the information contained in Form INS 1 ceases to be correct.

Adopt Ins 1407 to read as follows:

Unclear/Legis. Intent. RSA 541-A:29, as amended eff. 1-1-19, has specific timelines (60 days overall) for agency review, approval, and denial of applications which do not appear here in this section. If the Department can't meet the timelines, it may extend them only upon agreement of the applicant under RSA 541-A:29, IV. Also there is no duration indicated for the granted waivers or any language addressing what will happen if the circumstances change so that a waiver is no longer needed. But the JLCAR recently approved the same language in FP 2020-8, Ins 2704, and in FP 2020-85, Ins 4600, and the Department stated in response to OLS comment to those proposals that it complies with the provisions of statute and therefore, no citation or reference to the timelines are needed in the rule text.

PART Ins 1407 WAIVER OF RULES PROVISION

Ins 1407.01 Waiver of Rules.

(a) The commissioner, upon the commissioner's own initiative or upon request by an insurer, shall waive any requirement of this chapter if such waiver does not contradict the objective or intent of the rule and:

- (1) Applying the rule provision would cause confusion or would be misleading to consumers;
- (2) The rule provision is in whole or in part inapplicable to the given circumstances;
- (3) There are specific circumstances unique to the situation such that strict compliance with the rule would be onerous without promoting the objective or intent of the rule provision; or
- (4) Any other similar extenuating circumstances exist such that application of an alternative standard or procedure better promotes the objective or intent of the rule provision.

(b) No requirement prescribed by statute shall be waived unless expressly authorized by law.

(c) Any person or entity seeking a waiver shall make a request in writing.

(d) A request for a waiver shall specify the basis for the waiver and proposed alternative, if any.

Note to JLCAR on Legis. Intent: The rulemaking public hearing for this proposal was to be held on 10/23/20 as a WebEx webinar public hearing. RSA 541-A:11 appears to presume in-person hearings. While the Governor's E.O. #12 amends RSA 91-A to allow for remote hearings, that does not apply to departments. But the JLCAR may wish to ask the Department how the hearing proceeded and the public's access to it, since RSA 541-A:11, I(a) requires that an agency "shall afford all interested persons reasonable opportunity to testify...in accordance with the terms of the notice." A legislative fix may be needed in RSA 541-A:11, along with changes to all Chapter 200 rules, to clearly allow for remote rulemaking hearings. However, the Dept. has already adopted (after conditional approval by JLCAR) amendments to the Ins 200 rules to allow for remote rulemaking hearings in Ins 210.04. Those rules became effective 7-27-20.

Appendix I**Edit:** This should be Appendix II.

Form INS 1 Statement of Residency Including Applicable Exemptions

(a) A resident is a person who maintains his or her true, fixed, and permanent residence within the state of New Hampshire, 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

(b) A resident is 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.

(c) Exemption from residency may be claimed if:

- (1) The motor vehicle to be insured is garaged exclusively in New Hampshire; or
- (2) The individual is on active duty in the military service of the United States and claims New Hampshire as their legal state of residence; or
- (3) The individual is on active duty in the military service of the United States, currently stationed in New Hampshire, and all vehicles to be insured on this policy are currently garaged in New Hampshire.

(d) I understand that if I falsely claim for myself or any named insured to be a resident of the State of New Hampshire, or if I falsely claim for myself or any named insured to be entitled to exemption hereunder, I am subject to prosecution, imprisonment of up to one year, a fine of \$2,000, and the denial of coverage for any loss, not occurring in New Hampshire, under the automobile insurance policy for which I am applying.

(e) I also understand that this statement 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 before my next renewal after I or any named insured ceases to be a New Hampshire resident, and that I will be subject to the penalties listed in (d) above if I fail to do so.

(f) I/we, the applicant(s), has/have read the above and understand the penalties that may apply if I/we falsely claim to be a New Hampshire resident, or if I/we claim to be entitled to exemption hereunder.
CHECK ONE:

_____ I hereby attest that I am, and each named insured is, a resident of the State of New Hampshire as defined in (a) or (b) above and that I maintain a permanent residence located at (street address) in (city/town), New Hampshire, or that I, and each named insured, has met and can demonstrate the requirements of RSA 261:52-b or RSA 261:52-c as defined in (b) above..

_____ I hereby claim that I am, and each named insured is, entitled to exemption hereunder pursuant to (c) above.

Signed at (city/town), (county), (State), this (date) of (month), (year).

Date:

Signature(s):

APPENDIX II

Rule	State Statute the Rule Implements
Ins 1401.01	RSA 400-A:15, I; RSA 404-C; RSA 412; RSA 417-A
Ins 1401.02	RSA 400-A:15, I; RSA 404-C; RSA 412; RSA 417-A
Ins 1401.03	RSA 264; RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1402.01	RSA 400-A:15, I; RSA 412:1; RSA 412:43; RSA 417-A; RSA 404-C:1
Ins 1402.02	RSA 259:61, I; RSA 261:52-b; RSA 261:52-c; RSA 264:18, VI; RSA 404-C; RSA 400-A:15, I; RSA 412:3; RSA 412:43
Ins 1402.03	RSA 259; RSA 264:3; RSA 400-A:15, I; RSA 412:43; RSA 417-A:1; RSA 417-A:3; RSA 417-A:4; RSA 417-A:5
Ins 1402.04	RSA 400-A:15, I; RSA 412; 412:43; RSA 417-A:3; RSA 417:4, VIII(e)
Ins 1402.05	RSA 264; RSA 400-A:15, I; RSA 404-C; RSA 412:43;
Ins 1403.01	RSA 400-A:15, I; RSA 412:3, RSA 412:15; RSA 412:16; RSA 412:43
Ins 1403.02	RSA 400-A:15, I; RSA 412:15; RSA 412:16; RSA 412:43
Ins 1403.03	RSA 400-A:15, I; RSA 412:16; RSA 412:43
Ins 1404.01	RSA 400-A:15, I; RSA 400-B:4; RSA 412:38, II.; RSA 412:43
Ins 1405.01	RSA 400-A:15, I; RSA 404-C:1; RSA 412:1; RSA 412:43; RSA 417-A
Ins 1405.02	RSA 215-A; RSA 259:48; RSA 259:61, I; RSA 261:52-b; RSA 261:52-c; RSA 264:18; RSA 400-A:15, I; RSA 404-C; RSA 412:3; 412:43; RSA 417-A
Ins 1405.03	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.04	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.05	RSA 264; RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.06	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.07	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.08	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.09	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.10	RSA 400-A:15, I; 404-C; 412:43; RSA 417:4 VIII(e)
Ins 1405.11	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.12	RSA 264:33; RSA 265:105-a; RSA 400-A:15, I; RSA 404-C; RSA 412:6; RSA 412:43;
Ins 1405.13	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.14	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.15	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.16	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.17	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.18	RSA 400-A:15, I; RSA 404-C; RSA 412:43
Ins 1405.19	RSA 400-A:15, I; RSA 404-C; RSA 412:15; RSA 412:16; RSA 412:43
Ins 1405.20	RSA 400-A:15, I; RSA 404-C; RSA 412:43; RSA 417-A

Ins 1406.01	RSA 400-A:15, I; RSA 404-C; RSA 412:43; RSA 417-A:3-b
Ins 1407.01	RSA 400-A:15, I; RSA 541-A:22, IV
Appendix I	RSA 261:52-b; RSA 261:52-c; RSA 400-A:15, I; RSA 404-C; RSA 412:43; RSA 417-A:3-b;