

October 26, 2016

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Commercial Automobile Policy Program  
Manual Revisions

The Commissioner of Insurance has recently approved a new section to the North Carolina Reinsurance Facility Commercial Automobile Manual. The Standard Practices Section is introduced to reinforce the scope of the General Rules Section from the Standard Practice Manual providing eligibility requirements and other pertinent information as it relates to Commercial and Private Passenger Autos ceded to the Reinsurance facility.

In that regard, please find attached a copy of the new Standard Practices Section for your convenience.

This change becomes effective in accordance with the following Rule of Application:

These revisions are applicable to all new and renewal policies to become effective immediately.

Please see to it that this circular is brought to the attention of all interested personnel in your company.

Very truly yours,

F. Timothy Lucas

Personal Lines Manager

FTL:dms

Attachment

RF-16-15

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Unless otherwise noted, the following provisions are restated from the Standard Practice Manual. This chapter does not include all provisions found in the Standard Practice Manual. The provisions not included should be referred to as needed.

**A. Membership Obligation**

There is created pursuant to Article 37 of Chapter 58 of the General Statutes of North Carolina a non-profit unincorporated legal entity to be known as the North Carolina Reinsurance Facility (hereinafter referred to as the "Facility") consisting of all insurers licensed to write and engaged in writing within this State motor vehicle insurance or any component thereof. Every such insurer, as a prerequisite to further engaging in writing such insurance in this State, shall be a member of the Facility and shall be bound by the provisions of said Article 37, and the Plan of Operation (hereinafter referred to as the "Plan") and the Rules of Operation promulgated by the Board of Governors (hereinafter referred to as the "Board") pursuant thereto.

**B. Eligibility (GS 58-37-1)**

"Eligible risk," for the purpose of motor vehicle insurance other than non-fleet private passenger motor vehicle insurance, means:

1. A person who is a resident of this State who owns a motor vehicle registered or principally garaged in this State;
2. A person who has a valid driver's license in this State;
3. A person who is required to file proof of financial responsibility under Article 9A or 13 of Chapter 20 of the General Statutes in order to register his or her motor vehicle or to obtain a driver's license in this State;
4. A nonresident of this State who owns a motor vehicle registered and principally garaged in this State; or
5. The State and its agencies and cities, counties, towns and municipal corporations in this State and their agencies.

However, 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 motor vehicle insurance premiums and such person has not been discharged from paying said judgment, or if such person does not furnish the information necessary to effect insurance.

Refer to H.2., Application Requirements, **Rate Evasion Fraud**, for criteria regarding proof of North Carolina residency or eligible risk status.

**C. Extent of Coverage**

Policies issued to risks ceded to the Facility shall have the contract terms established by the Board of Governors and filed with the Commissioner of Insurance. Such contract terms will be disseminated by or on behalf of the Facility.

The ceding privileges are as follows:

1. For eligible risks (except as provided in Subparagraph 2. below) motor vehicle insurance coverage up to the following limits shall be eligible for cession to the Facility:

a. Bodily Injury Liability:  
\$100,000 Each Person; \$300,000 Each Accident

b. Property Damage Liability:  
\$50,000 Each Accident

c. Single Limit Bodily Injury And Property Damage Liability:

A limit per accident equal to the total of the minimum per accident Bodily Injury and Property Damage Liability limits required under the North Carolina Vehicle Financial Responsibility Act of 1953 as it is in effect on the date of cession to the Facility.

d. Medical Payments:  
\$2,000 Each Person, except that this coverage shall not be available for motorcycles.

e. Uninsured Motorists:  
\$1,000,000 Each Person and \$1,000,000 Each Accident for Bodily Injury, \$50,000 for Property Damage (\$100 Deductible).

f. Combined Uninsured And Underinsured Motorists:  
\$1,000,000 Each Person and \$1,000,000 Each Accident for Bodily Injury and, for Uninsured Motorists, \$50,000 Each Accident for Property Damage (\$100 deductible).

2. If an eligible risk is subject to motor vehicle insurance or financial responsibility limits required by:

- a. Any federal law or federal agency regulation;
- b. Any law of the State of North Carolina;
- c. Any rule duly adopted under Chapter 150B, General Statutes of North Carolina; or
- d. Any rule duly adopted the North Carolina Utilities Commission

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motor vehicle insurance coverages up to the limits required by such law or rule shall be eligible for cession to the Facility.

3. For persons who must maintain liability coverage limits above those available under Subparagraph C.1. of this Section in order to obtain or continue coverage under personal excess liability or personal "umbrella" insurance policies, motor vehicle insurance coverage up to the following limits shall be eligible for cession to the Facility:

a. Bodily Injury Liability:

\$250,000 Each Person; \$500,000 Each Accident

b. Property Damage Liability:

\$100,000 Each Accident

c. Single Limit Bodily Injury And Property Damage Liability:

A limit per accident equal to the total of the minimum per accident Bodily Injury and Property Damage Liability limits required under the North Carolina Vehicle Financial Responsibility Act of 1953 as it is in effect on the date of cession to the Facility.

d. Medical Payments:

\$5,000 Each Person, except that this coverage shall not be available for motorcycles.

e. Uninsured Motorists:

\$1,000,000 Each Person and \$1,000,000 Each Accident for Bodily Injury, \$50,000 for Property Damage (\$100.00 Deductible).

f. Combined Uninsured And Underinsured Motorists:

\$1,000,000 Each Person and \$1,000,000 Each Accident for Bodily Injury and, for Uninsured Motorists, \$50,000 Each Accident for Property Damage (\$100 deductible).

**D. Rules And Rates; Policy Forms**

All policies issued on risks ceded to the Facility shall be in accordance with the policy forms and endorsements and with the rules, rates and rating by a licensed or statutory rating bureau or organization authorized by the Board of Governors, and filed with the Commissioner of Insurance. Such forms, rules, rates and rating plans will be disseminated by or on behalf of the Facility.

**E. Termination of Cession**

1. Expiration

Cession of a risk automatically terminates on the expiration date of the policy period covered by the Notice of Cession, unless the policy has been terminated at an earlier date.

Please note that the Plan of Operation requires the risk to have an underwriting review and the Facility to be again notified of cession prior to the renewal effective date if cession of the risk is to be continued. This requirement applies to each subsequent renewal.

2. Flat Cancellation

When a company cedes a risk for a renewal term and the policyholder does not pay any renewal premium, the company must notify the Facility of termination of cession (See Section 3. Paragraph E. of the Standard Practice Manual). This shall be done in one of two ways depending on the accounting practices of the company.

- a. If the company has submitted a cession record only for the ceded policy then the company must notify the Facility of termination of cession by canceling the cession via online data entry in EDGE, or through a transaction Code 4 cession sent in an FTP cession file. Such notice must be submitted to the Facility by not more than 90 days after the renewal effective date.

Flat cancellations made after 90 days from the effective date of cession will be suspended pending review by NCRF and will be processed separately.

- b. If the company does record the renewal quotation as written premium and cancels such amount when the renewal is not taken, the termination of cession will be accomplished either through the Monthly Accounting Detail Premium Report or through cancellation premium created directly online in EDGE and the Notice of Cession record should not be cancelled online in EDGE on such not-taken renewals.

3. Termination of Insurance (GS 58-37-50)

No member may terminate insurance to the extent that cession of a particular type of coverage and limits is available under the provisions of this Article except for the following reasons:

- a. Non-payment of premium when due to the Insurer or Producing Agent.  
b. The named insured has become a non-resident of this State and would not otherwise be entitled to insurance on

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submission of new application under this Article.

- c. A member company has terminated an agency contract for reasons other than the quality of the agents' insureds or the agent has terminated the contract and such agent represented the company in taking the original application for insurance.
- d. When the insurance contract has been canceled pursuant to a Power of Attorney given a company licensed pursuant to the provisions of GS 58-35-5.
- e. The named insured, at the time of renewal, fails to meet the requirements contained in the corporate charter, articles of incorporation, and/or bylaws of the insurer, when the insurer is a company organized for the sole purpose of providing members of an organization with insurance policies in North Carolina.
- f. The named insured is no longer an eligible risk under GS 58-37-1.

In accordance with the instructions in the initial part of this rule, it should be apparent that when insurance terminates the cession is likewise terminated. If the termination of insurance results in an accounting transaction for the purpose of canceling written premium, the Facility will be notified of the termination of cession through the Monthly Detail Premium Records. If the termination occurs at the end of the policy period, cession automatically terminates.

(GS 58-2-164)

If an applicant provides false or misleading information material to the applicant's or any named insured's status as an eligible risk and that fraudulent information makes the applicant or any named insured appear to be an eligible risk when that person is in fact not an eligible risk, the insurer may do any or all of the following:

- (1) Refuse to issue, amend, or endorse a policy.
- (2) Cancel or refuse to renew a policy that has been issued.
- (3) Deny coverage for any claim by the applicant for auto liability, comprehensive, or collision coverage. This subdivision does not apply to bodily injury or property damage claims of innocent third parties to the extent of any minimum financial responsibility requirement of State or federal law.

Any motor vehicle liability policy may provide that the insured shall reimburse the insurer for any payment made under a policy of insurance if the issuance of the policy was induced by a knowing and material misrepresentation of facts relating to the insured's status as an eligible risk. For purposes of this subsection, a payment made shall include any sums paid for satisfaction, in whole or in part, of any judgment against the insured or for a reasonable settlement of a claim against the insured for bodily injury or property damage. A payment made shall further include any costs or attorneys' fees incurred by the insurer in the adjustment, investigation, or defense of a claim.

**F. Commissions**

Commissions paid to Producers on business ceded to the North Carolina Reinsurance Facility are subject to minimums as provided in GS 58-37-30. These minimums are defined as not less than the commission on insurance coverage written through the North Carolina Automobile Insurance Plan on May 1, 1973 which is as follows:

- 1. For long-haul trucking applicants and public passenger carrying vehicles other than school buses, 5% of the policy premium for commission to a licensed producer designated by the insured.
- 2. For other applicants, 10% of the policy premium for commission to a licensed producer designated by the insured.
- 3. On any applicant rated and domiciled outside of this State, the licensed producer may be paid only that portion of the producer's commission specified above which is permissible under the laws of the state in which the applicant is rated and domiciled.

The same commission must apply uniformly statewide. Commissions paid on business submitted to designated carriers are contained in Section 3. Paragraph L. of the Standard Practice Manual.

**G. Service Standards**

- 1. Each insurer shall provide the same type of service to ceded business that it provides for its voluntary market.
- 2. Records provided to agents and brokers shall include an indication that the business is ceded.
- 3. When an insurer cedes a policy or renewal to the Facility and the Facility premium is higher than the premium that would normally be

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charged if retained by the insurer, the policyholder shall be informed:

- a. that the policy is ceded;
- b. that the coverages are written at the Facility rate, which rate differential must be specified;
- c. of the reason or reasons for the cession to the Facility;
- d. that the specific reason or reasons for the cession to the Facility will be provided upon the written request of the policyholder to the insurer; and
- e. that the policyholder may seek insurance through other insurers who may elect not to cede the policy.

If the policyholder obtains motor vehicle liability insurance through another insurer which elects not to cede the policy to the Facility and the policyholder cancels the ceded policy within 45 days of the effective date of the ceded policy, the earned premium for the ceded policy shall be calculated on the pro rata basis, except that the pro rata calculation shall not apply to a cancellation by any insurance premium finance company as provided in GS 58-35-85.

4. Upon the written request of any eligible risk who has been notified pursuant to Subparagraph 3. above that his motor vehicle insurance policy has been ceded to the Facility, the insurer ceding the insurance policy must provide in writing to that eligible risk the specific reason or reasons for the decision to cede that policy to the Facility. Proof of mailing of the written reason or reasons is sufficient proof of compliance with this obligation.

**Note:** GS 58-37-25 provides: "With regard to any notice of cession or any written or oral communications specifying the reason or reasons for cession, there will be no liability on the part of, and no cause of action of any nature will arise against: (1) any insurer or its authorized representatives, agents, or employees, or (2) any licensed agent, broker, or persons who furnish to the insurer information as to the reason or reasons for the cession, for any communications or statements made by them, unless the communications or statements are shown to have been made in bad faith with malice in fact".

**H. Minimum Underwriting Requirements**

1. Standards - Each member company is responsible to meet the following minimum underwriting standards for all business ceded to the Facility. Each member ceding risks is responsible to determine that all business ceded to the Facility is correctly classified and rated to develop the correct and proper premium. Classification and rating practices and procedures of each member company shall correspond with those followed for non-Facility business, subject to the following:
  - a. As to private passenger cars ceded to the Facility, member companies shall:
    - (1) Obtain the identification, date of birth, driver license number and state of issue (including date of original licensing for persons licensed less than two years) of the applicant, of all operators resident in the applicant's household and of any non-residents shown as regular operators.
    - (2) Determine the use and place of principal garaging of each vehicle to be insured.
    - (3) Obtain within 60 days of the cession effective date, for each initial cession, and at least annually thereafter, a current record of convictions for moving traffic violations for the applicant and each operator whose driving record would affect the sub-class for every vehicle subject to rating under the North Carolina Safe Driver Insurance Plan.
    - (4) Correctly classify and rate each vehicle in accordance with the approved North Carolina Personal Auto Manual.
    - (5) Correctly determine and charge any applicable recoupment surcharges.
  - b. As to other than private passenger cars ceded to the Facility, member companies shall develop sufficient identification, territory, use and other information correctly to classify and price, in accordance with the approved North Carolina Reinsurance Facility Commercial Automobile Manual, the insurance afforded.
  - c. As to every ceded risk appearing to be eligible for experience rating under the mandatory Automobile Liability Experience Rating Plan in the NCRF Commercial Automobile Manual, including (a) risks involving five or more private passenger or commercial automobiles or three or more public automobiles, (b) risks involving an estimated annual manual premium of at least \$6,500 for three or more automobiles

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of any type, and (c) garage annual manual premium of at least \$6,500, member companies shall:

- (1) If complete experience rating data are available at the time of policy issuance, calculate the correct experience modification and apply it in establishing the policy premium.
- (2) If complete experience rating data are not available at the time of policy issuance:
  - (a) Apply a tentative experience modification of 1.50.  
Exception: In cases where the experience modification applicable to the preceding term of the policy is higher than 1.50, such higher experience modification must be applied as the tentative experience modification for the current term.
  - (b) Endorse the policy (i) noting application of the tentative experience modification and (ii) to provide for subsequent application of any experience modification determined in accordance with the NCRF Automobile Liability Experience Rating Plan;
  - (c) Determine the names of companies which insured the risk during the immediately preceding four years and the numbers and effective dates of their policies;
  - (d) If all of the required previous experience rating data are not available, notify the Reinsurance Facility that a risk eligible for experience rating has not information to rate;
  - (e) Provide the Reinsurance Facility with the information received and request the Facility office to call for and supply the required experience rating data and/or the experience modification; and
  - (f) Apply the experience modification and adjust the policy premium accordingly.
- (3) Provide complete experience rating data related to a ceded risk upon written request by the Facility. This data must be submitted directly to the Facility by the due date specified in the request, which will not be less than 30

days from the date of request. If the data is not received complete and in good order by the due date specified in the written request, a penalty of \$100.00 per day will be assessed to the company for each day the data is late until the data is received complete and in good order. The Facility initially shall bill the company for the penalty upon receiving the requested data complete and in good order, or within 30 days from the due date of the report, and periodically thereafter as appropriate. Each penalty billing will appear on the member company's Monthly Account Activity Statement and is due and payable in accordance with that statement's due date and is subject to Late Payment Fees in accordance with Section 4, Chapter 8, Paragraph E of the Standard Practice Manual.

d. Member companies shall make all underwriting records of business ceded to the Facility available for audit by the Audit Committee or its' designate. Member companies shall not:

- (1) Cede any risk to the Facility except as provided by the rules outlined in Articles IX and X in the Plan of Operation.
- (2) Refuse to insure any eligible risk for cedable coverages unless an exemption has been approved for that company by the Board of Governors.

2. Application Requirements - Each member company shall provide agents with motor vehicle insurance application forms to obtain from applicants sufficient information properly to classify and rate each exposure. This shall include at least the following:

- a. The name, address, date of birth, operator's license number, and state of issue for the applicant, each operator residing in the applicant's household, and any non-residents who are regular operators, as well as the original date of licensing for any operator licensed for less than two years.
- b. Identification of each of the specified vehicles to be insured to include the year, the make and model, the body type and the vehicle identification number.
- c. The use of each vehicle to be insured, as required by the approved classification plan, and the place of principal garaging.
- d. A record of all accidents and convictions by the applicant and all operators as needed to establish the correct sub-class according to

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- the North Carolina Safe Driver Insurance Plan.
- e. The correct gross weight and information regarding the use, including the radius of operation, of any commercial automobile.
  - f. With respect to risks eligible for experience rating:
    - (1) The names of the prior carriers for the past four years;
    - (2) The earned premiums for the past four years; and
    - (3) Current valued loss runs for the past four years.
  - g. Any other information necessary to develop the correct rating and premium for any type of risk eligible to be ceded.
  - h. A Statement of Eligibility for Cession of Higher Limits Form NCRF-30 (see Section 3 Exhibit F-1 in the Standard Practice Manual) when coverage limits above 100/300/50 are to be ceded to the Facility pursuant to Subparagraph C.2. of this Section and the coverage limits are required by rule, law or regulation other than the Vehicle Financial Responsibility Act of 1957 (Article 13 Chapter 20, General Statutes of North Carolina). The insured must complete and sign a Form NCRF-30, and the signed form, or a copy thereof, must be retained in the ceding company's file. Absent a finding by the Facility of a lack of good faith by the ceding company, the ceding company shall be entitled to rely upon the insured's satisfactorily completed statement of eligibility for the cession of limits above 100/300/50. If, upon audit, the ceding company does not have a satisfactorily completed Form NCRF-30 in its file, the ceding company, in order to maintain cession of limits above 100/300/50 to the Facility or, in the event of a loss, in order to recover reimbursement from the Facility for losses in excess of 100/300/50, must prove, to the satisfaction of the Facility, that the higher limits were eligible to be ceded to the Facility as of the effective date of the initial cession of the insured's policy by the ceding company or as of the date notice of such cession was received by the Facility. A Form NCRF-30 is satisfactorily completed if the form is fully completed and the date the form was signed by the insured is prior to the later of (1) the date 45 days after the initial notice of cession of the insured's policy by the

ceding company was received by the Facility or (2) the date of a loss.

The initial statement of eligibility by the insured shall remain in effect and may be relied upon by the ceding carrier for subsequent successive renewals of the policy until such time as the insured advises the ceding company that the insured is no longer required by the rules, laws and regulations referenced in GS 58-37-35(b)(1)e. to maintain coverage limits in excess of 100/300/50 or until the ceding company becomes aware that the insured is no longer required by such rules, laws or regulations to maintain coverage limits in excess of 100/300/50.

- i. A Certification of Higher Coverage Limits Form NCRF-31 (See Section 3 Exhibit G-1 in the Standard Practice Manual) when liability coverage limits above 100/300/50 or medical payments limits above \$2,000 are to be ceded to the Facility pursuant to Subparagraph C.3. of this Section. The insured must complete and sign a copy of Form NCRF-31 and the signed form, or a copy thereof, must be retained in the ceding company's file. Absent a finding by the Facility of a lack of good faith by the ceding company, the ceding company shall be entitled to rely upon the insured's satisfactorily completed certification for the cession of liability coverage limits above 100/300/50 and/or medical payments limits above \$2,000. If, upon audit, the ceding company does not have a satisfactorily completed Form NCRF-31 in its file, the ceding company, in order to maintain cession of such limits to the Facility or, in the event of a loss, in order to recover reimbursement from the Facility for losses in excess of 100/300/50 for the liability coverages and/or in excess of \$2,000 for medical payments, must prove, to the satisfaction of the Facility, that the higher limits were eligible to be ceded to the Facility as of the effective date of the initial cession of the insured's policy by the ceding company or as of the date notice of such cession was received by the Facility. A Form NCRF-31 is satisfactorily completed if the form is fully completed and the date the form was signed by the insured is prior to the later of (1) the date 45 days after the initial notice of cession of the insured's policy by the ceding company was received by the Facility or (2) the date of loss.

The initial certification by the insured shall remain in effect and may be relied upon by

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the ceding carrier for subsequent successive renewals of the policy until such time as the insured advises the ceding company that the higher limits are no longer needed in order to obtain or continue coverage under personal excess liability or personal "umbrella" insurance policies or until the ceding company becomes aware that the higher limits are no longer needed in order to obtain or continue coverage under personal excess liability or personal "umbrella" insurance policies.

**Rate Evasion Fraud (GS 58-2-164)**

To the extent relevant to a particular criterion for eligible risk status and for the purpose of obtaining other than nonfleet private passenger motor vehicle insurance, reliable proof of North Carolina residency or eligible risk status includes two or more of the following:

- (1) A utility bill in the name of the applicant showing a North Carolina address for the principal place of business of the applicant.
- (2) A receipt for real property taxes paid by the applicant to a North Carolina locality within the preceding 12-month period and showing the applicant's current North Carolina address.
- (3) A valid North Carolina vehicle registration issued to the applicant and showing the applicant's current North Carolina address.
- (4) A federal income tax return filed by the applicant for the most recent prior filing period showing the applicant's name and current North Carolina address.

The following definitions apply to the above:

"Applicant" means one or more persons applying for the issuance or renewal of an auto insurance policy on which the person or persons will be a named insured.

"Principal place of business" means the single physical location from which the majority of the essential operations of the applicant's business are directed and controlled. The location of a consultant, service agent, or attorney of the applicant shall not be sufficient to establish an applicant's principal place of business.

3. **Ceding at Renewal**—The Plan of Operation requires each risk to have an underwriting review and the Facility to be notified of cession prior to the effective date of each renewal if cession is to be effective on that date. This

requirement applies to every renewal to be ceded whether or not the expiring policy was ceded.

THIS WILL INCLUDE AS A MINIMUM OBTAINING CURRENT RECORDS OF CONVICTIONS FOR MOVING TRAFFIC VIOLATIONS EVERY YEAR FOR ALL OPERATORS OF THE VEHICLES INSURED UNDER EACH CEDED POLICY SUBJECT TO RATING UNDER THE SAFE DRIVER INSURANCE PLAN

4. **Agents' Responsibility** - It shall be the responsibility of each agent to obtain from the applicant answers to all relevant questions on the application for insurance and to obtain from the applicant any other information needed for correct premium determination.

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