



Risk Sharing Pool Eligibility Manual
Newfoundland and Labrador

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RISK ELIGIBILITY

A. All Applicants Must Be Able To Obtain Automobile Insurance

This section outlines the criteria used to determine the eligibility for transfer to the Risk Sharing Pool (RSP) for the following:

- New business
- Renewals
- Portfolio Transfers
- Policy Changes (endorsements)
- Mid-Term Transfers (with no policy change)

Background

The Insurance Companies Act of Newfoundland & Labrador places the obligation on the Facility Association, through its Plan of Operation, to provide a contract of automobile insurance to owners and licensed drivers of motor vehicles, who but for the Plan, would be unable to obtain such insurance. Every insurer writing automobile insurance in Newfoundland & Labrador is a member of the Facility Association and must abide by the Plan of Operation.

An amendment to the Newfoundland & Labrador Insurance Companies Act, RSNL1990 Chapter I- 10, Bill 6, Section 98, subsection (2.1)¹ came into effect on August 1, 2019. The amendment required the Facility Association to include in its Plan of Operation a provision with respect to the establishment and operation of a Risk Sharing Pool for members.

Mandate

Facility Association members must ensure that every applicant for automobile insurance receives a contract of insurance.

Members must accept an application for automobile insurance unless there is an underwriting rule approved by the Newfoundland & Labrador Public Utilities Board of Commissioners of Public Utilities that permits members to decline the application. Members that accept an application may either:

- Write the automobile insurance contract solely for the members own account, or;
- Write the automobile insurance contract and transfer the risk to the Risk Sharing Pool in accordance with the provisions of the Plan of Operation

Facility Association members in Newfoundland and Labrador are required to complete the Newfoundland & Labrador Public Utilities Board's (PUB) Facility Association Residual Market Placement report as prescribed by the PUB.

¹ <https://www.assembly.nl.ca/Legislation/sr/statutes/i10.htm>

B. Risk Eligibility for the Risk Sharing Pool

A risk is eligible for the RSP if it meets **all** of the following criteria:

1. THE RISK INSURED IN ACCORDANCE WITH THE AUTOMOBILE INSURANCE ACT AND THE VEHICLE REGISTERED IN NEWFOUNDLAND & LABRADORAS PER THE HIGHWAY TRAFFICACT.

2. THE VEHICLE IS A PRIVATE PASSENGER VEHICLE DEFINEDAS:

- A motor vehicle not weighing more than 4500kg that is:
 - Used for pleasure OR
 - Used for driving to or from work or school OR
 - Used for business purposes, including farming operations OR
 - Used for Ridesharing when the application is turned **off**.

- The following are not included in the definition of Private Passenger Vehicles:
 - A motorcycle, power bicycle or moped
 - A vehicle used for commercial purposes, including, but not limited to:
 - A vehicle used for transporting individuals for compensation, delivery of goods, courier or messenger service, parcel delivery, meal delivery or driver training
 - A vehicle rated under a fleet formula
 - A short-term lease or rental vehicle
 - A funeral vehicle
 - A vehicle held for sale or used for demonstration or testing
 - A vehicle used for Ridesharing when the application is turned **on**, or for taxicab services or commercially licensed limousine or livery services.
 - An emergency vehicle
 - A recreational vehicle
 - A vehicle registered as an antique vehicle
 - All-terrain, snowmobile, miniature motorized vehicle or any other off-highway vehicle.

Notes:

- Business use does not include use listed under Commercial Section, even though Private Passenger rates are used to determine the premium, with the exception of the incidental carrying of tools. Business use may be used when the ceding company would accept the incidental carrying of tools on their own book.
- Business use does not include any use listed under the Public Vehicle Section even though Private Passenger rates are used to determine the premium. This definition Business excludes vehicles used to carry passengers for compensation on behalf of Transportation Network Companies.

- Pickups, trucks and vans rated as ‘farm use’ i.e. Class 33 or 34 are not eligible for the RSP. These vehicle types are only eligible for the RSP if rated as private passenger with farm use and there is another similar vehicle on the policy rated for commercial use.
- Ridesharing defined as a service through which passengers obtain and pay for on-demand transportation.

3. THE RISK DOES NOT HAVE AN UNDERWRITING RULE APPROVED BY THE BOARD OF COMMISSIONERS OF PUBLIC UTILITIES THAT PERMIT THE MEMBER TO DECLINE THE RISK

Note: Eligibility for transfer is determined according to your filed underwriting rules in effect.

Transaction Type	Effective Date of Underwriting Rules
New Business	Policy Inception Date
Endorsements where a material change to risk exists (e.g. addition of vehicle)	Endorsement effective Date
Endorsements where there is no material change to risk (e.g. correction of vehicle description)	Policy Inception Date OR Renewal Transfer Date

Any changes subsequent to an eligible risk transfer to the RSP will not require removal of the risk from the RSP unless a new policy is required. Any changes to the risk (such as change of an existing principal operator or substitution of an existing vehicle) must be underwritten for RSP eligibility at renewal.

4. THE RISK IS INSURED FOR AT LEAST THE MINIMUM MANDATORY ROAD COVERAGE

Note: Once a vehicle with road coverage is in the RSP, temporary removal of all coverage except Comprehensive/Specified Perils or suspension of coverage using END 16 will not disqualify the risk from the RSP. That vehicle may remain in the RSP until next renewal. If the coverage is not re-added at the renewal, the vehicle is no longer eligible for the RSP.

5. THE RISK RATED AND CLASSIFIED IN ACCORDANCE WITH MEMBERS OWN RULES AND RATES APPROVED BY THE BOARD OF COMMISSIONERS OF PUBLIC UTILITIES.

- **System Generated Rates**
The application of system rounding rules, waiving of additional premiums below a certain limit on midterm changes and other calculation differences resulting from generated rates are acceptable deviations from the published, approved rates where such rules form part of members rating rules and algorithms on file with Board of Commissioners of Public Utilities.
- **Data Entry Mistakes**
A transcription error resulting in an incorrect premium or risk classification will not deem the risk as ineligible for the RSP. Members are required to remediate and the onus is on members to substantiate transcription errors as clerical in nature.

- **Incorrect Classification / Rating**

Any deviation from the approved classification rules and/or rates, which do not result from system application or (II) proven data entry mistakes is considered an incorrect classification and/or rate and makes the risk ineligible for transfer to the RSP

Note: Risks considered part of a “portfolio transfer arrangement” and underwritten with claim forgiveness rating and/or renewal discount will be eligible for the RSP ‘subject to’ members receiving approval from the regulator to apply a renewal claim forgiveness programme and/or renewal discount. In the event of an investigation or audit, members will be required to provide support that risks are part of a portfolio arrangement.

6. THE POLICY TERM TRANSFERRED DOES NOT EXCEED 12 MONTHS.

Note: At the end of the policy term, the risk will be eligible for another term in the RSP not exceeding a 12-month period

7. PRIOR EXPERIENCE AND MOTOR VEHICLE REPORT (MVR) ORDERING

- **Prior Experience Reports:** Prior experience reports are required on the named insured and all operators, even those operators claiming to have never been previously insured/licensed or from outside the province or country. Acceptable prior experience reports include electronic formats, letters of experience or detailed documented calls. The following outline the requirements for prior experience report ordering as it relates to New Business, Existing Risks (not in the RSP), Existing Risks (in the RSP) and Change in Risk:

New Business (including portfolio transfers accepted under new business rules) prior experience reports are required

Existing Risks - Not in the RSP (or a member as part of a group of companies owned and operated by the same company) where the member transferring the risk to the RSP can confirm policy and claims information with an associated company as described above. (Existing business includes portfolio transfers accepted under renewal rules are approved by Board of Commissioners of Public Utilities

- Risks continuously insured with members **equal to** and **greater than** five (5) years do not require a prior experience report;
- Risks insured with members for a period of **less than** five (5) years immediately preceding the current term require a prior experience report ‘unless’ an experience report was already ordered during that period.

Existing Risks - In the RSP: Members must immediately request experience reports and underwrite the risk for eligibility in those instances where prior experience reporting was not obtained when initially transferred to the RSP

Change in Risk: Prior experience reports are required on every new operator added to the policy

- **Motor Vehicle Reports (MVR)**

New Business: Motor vehicle reports are required on all operators listed on the vehicle(s) ceded within 90 days prior to the transfer effective date or within 15 days of the transfer effective date.

Renewal: Motor vehicle reports are required on all operators listed on the vehicle(s) ceded within 90 days prior to the transfer. For other than annual policies, MVRs are required every 12-month period

Example: Policy renewed February 5, 2013 for 6 months. MVRs ordered on all drivers on December 2012. The policy scheduled to renew August 5, 2013 (8 months from December 2012) and there were no change in operators. Given there was no change in operators, new MVR's would not be required.

Midterm Policy Change (Endorsement)

MVRs are required at the beginning of the current policy term on all operators listed on the vehicle(s) ceded

OR

Risks where MVRs on all operators listed on the ceded vehicle(s) was not requested at the beginning of the current policy, members must request MVRs on all operators within 90 days prior to the transfer effective date or within 15 days of the transfer effective date

Members must request MVR's on any new operators associated with the policy change within 90 days prior to the transfer effective date or within 15 days of the transfer effective date. Operators associated with the policy change that are existing operators on a vehicle in the RSP do not require a new MVR with the policy change transfer to the RSP 'subject to' that the MVR was previously ordered and underwritten for eligibility.

Example 1:

1/12/2002 - effective date of policy with 2 vehicles and 2 drivers

15/5/2003 - vehicle 3 with principal operator C newly-added to policy

20/5/2003 - vehicle 3 transmitted to the RSP with transfer effective 15/5/2003

20/5/2003 - MVR ordered on principal operator C

Example 2:

1/12/2002 - effective date of policy with 2 vehicles and 2 drivers

15/5/2003 - vehicle 3 added to policy with same principal operator as vehicle 2

20/5/2003 - vehicle 3 transmitted to the RSP with transfer effective 15/5/2003

20/5/2003 - no MVR ordered since principal operator is not a newly added operator and a MVR previously order to meet eligibility requirements

Types of Driver's Licence:

- a) **Permanent Newfoundland & Labrador Licence:** Members are required to request MVRs in accordance with the Report Ordering & Frequency Schedule (please refer to Page 8)
- b) **Permanent Licence from another Canadian jurisdiction:** Members must obtain a MVR from the jurisdiction or in the interim illustrate requests to the broker/agent or insured to immediately obtain an MVR from that jurisdiction
- c) **Permanent Licence from jurisdiction outside Canada or an International Licence:** Members must document and abeyance to request an MVR immediately once a permanent licence obtained
- d) **Temporary Licence:** Members must document and abeyance to request an MVR once a permanent licence obtained
- e) **Permanent Licence from any other jurisdiction and Newfoundland & Labrador Temporary Licence:** Follow the procedure for Temporary Licence [(d) above] **Class 5 (Level I) Licence:** Members must document and abeyance to request an MVR once a Class 5 (Level II) licence obtained
- f) **Class 5 (Level II) Licence:** Follow the procedure for Permanent Newfoundland & Labrador Licence. [(a) above]
- g) **Newfoundland & Labrador driver's licence not on Members Record:** Members must document and abeyance to obtain a permanent licence and request an MVR in accordance the Report Ordering & Frequency Schedule (please refer to Page 8)

Note: In the case of (d), (e) or (f) above, if the operator's licence status remains unchanged on renewal, members must document and abeyance to obtain a permanent licence and request an MVR. Notably, if the aforementioned procedure were not in accordance with members approved renewal underwriting rule, the risk would be ineligible for the RSP.

C. Documentation

Appropriate documentation/evidence to establish RSP eligibility or report ordering includes the following minimum requirements:

Prior Experience Reports

Acceptable documentation include one of the following:

- Electronic reports: Date ordered, name of operator, details of claims
- Experience letter: Date sent, operator name, insurer information , details of claims
- Phone call: Prior insurer, date called, operator(s) name, contact information, details of claims, associated company

Motor Vehicle Report (MVR)

Acceptable documentation included one of the following:

- MVR(s) ordered, order date, and driver's licence number or driver's name
- Date received, MVR search date, dates and types of convictions, conviction history, driver's licence status

General

For compliance with the "Sunset Clause" and FA's retention policy members must maintain documentation either hard copy or electronic, for a minimum of 2-years and 90 days following transfer date.

Subsequent Information Obtained by Members (After Ceding to the RSP)

New Business (Within 60 Days)

Within 60 days of the policy effective date and subsequent to the transfer of a risk to the RSP, should a member receive subsequent information that existed prior to the policy effective date that information affects the initial classification/ rating of the risk such as an undisclosed use of the vehicle or undisclosed prior claims/convictions:

- If the information does not affect the risk eligibility for transfer to the RSP, the risk may remain in the RSP subject to amending premiums and reporting the premium and/or statistical information to the RSP;
- If the risk is no longer eligible for the RSP and the member is not retaining the risk, the member must remove the risk from the RSP effective no later than 21 days from the date the information was received;
- If the risk is no longer eligible for the RSP and the member is retaining the risk, the member must remove the risk from the RSP effective the date the information was received.

New Business (After 60 Days)

After 60 days from the policy effective date and subsequent to the transfer of a risk to the RSP, the member receives information of a circumstance that existed prior to the policy effective date that affects the initial classification/ rating of the risk (such as an undisclosed use of the vehicle or undisclosed prior claims/convictions).

- Where the policy is not being cancelled or the coverage/ premium changed the risk may remain in the RSP at the original premium and coverage, and;
- On the expiry of the policy term, the risk must be underwritten for eligibility

Renewals and Portfolio Transfers

Eligibility for transfer to the RSP is determined at the date the renewal/portfolio transfer is processed and transmitted to the RSP. Should a member receive subsequent information after a renewal was released.

- If the information does not make the risk ineligible for transfer the risk may remain in the RSP subject to the member amending the policy premium and report the premium and/or statistical information to the RSP;
- If the risk is no longer eligible for the RSP and the member is not retaining the risk, the member must remove the risk from the RSP effective no later than 21 days from the date the information was received;
- If the risk is no longer eligible for the RSP and the member is retaining the risk, the member must remove the risk from the RSP effective the date the information was received.

Change in Risk (Before the Renewal Effective Date)

After the renewal has been released and before the renewal effective date, if there is a change in risk such as at-fault claims and driving convictions:

- Where the policy is not being cancelled or the coverage/ premium changed the risk may remain in the RSP at the original premium and coverage and;
- On the expiry of the policy term, the risk must be underwritten for eligibility

Change in Use (After the Renewal Effective Date)

If there is a change from private passenger use, after the renewal has been released and after the renewal effective date, making the risk no longer eligible for the RSP:

- If the member is not retaining the risk, the member must remove the risk from the RSP effective no later than 21 days from the date the information was received
- If the member is retaining the risk, the member must remove the risk from the RSP effective the date the information was received

Change in Risk (After the Renewal Effective Date)

If there is a change in the risk after the renewal has been released and after the renewal effective date:

- The risk may remain in the RSP at the original renewal premium, and;
- On the expiry of the policy term, the risk must be underwritten for eligibility

Midterm Transfers to the RSP

At any time within the policy term, a member may transfer a risk to the RSP.

- If there was no change in operators or vehicles between the policy effective date and the transfer effective date, a deterioration in the risk e.g. additional claims between the policy effective date and the transfer effective date, will not affect the risk's eligibility for that term. On the expiry of the policy term, the risk must be underwritten for eligibility;
- If, after transfer, the risk changes affecting the risk's eligibility e.g. a driver with convictions newly-added to the policy, but the member is not retaining the risk, the member must remove the risk from the RSP effective no later than 21 days from the date on which the information making the risk ineligible was received ;
- If, after transfer, the risk changes affecting the risk's eligibility for the RSP and the member is retaining the risk, the member must remove the risk from the RSP effective the date the member received information making the risk ineligible.

D. Transfer Limitations

New business

An eligible risk is acceptable to the RSP if ceded within 15-days of the automobile policy effective date. Eligible risks ceded beyond 15-days of the policy effective date, will be accepted in the RSP 1-day after transmittal date

*Example 1: Policy inception date June 1, 2003
Policy transmitted to the RSP June 11, 2003 Policy received by the RSP June 12, 2003 (12 days) Policy accepted in the RSP as of inception date*

*Example 2: Policy inception date June 1, 2003
Policy transmitted to the RSP June 16, 2003
Policy received in the RSP June 17, 2003 (17 days) Policy accepted in the RSP effective June 17, 2003*

Renewal and Portfolio Transfers

An eligible risk is acceptable to the RSP on or before the renewal policy effective date. Eligible renewals ceded beyond the renewal policy effective, will be accepted in the RSP 1-day after transmittal date

Endorsements [New to the RSP]

An eligible risk is acceptable to the RSP if endorsed within 15-days of the endorsement effective date. Eligible risks ceded beyond 15-days of the endorsement effective date, will be accepted in the RSP 1-day after transmittal date

Endorsements [In the RSP]

There is no time limitation for endorsements such as changes to coverages and deductibles to risks already ceded in the RSPs

E. Coverage Limitations

- The transferred Third Party Liability limit has a maximum of \$2,000,000.
- The transferred Family Protection coverage (SEF 44) has a maximum of \$2,000,000.
- Transferred endorsements (standard or non-standard) must be approved by the Superintendent of Insurance.

Note: With respect to risks transferred to the RSP:

- Only those coverages/endorsements (subject to the coverage limitations above) associated with the vehicle ceded and the applicable premiums may be transferred to the RSP;
- All coverages and endorsements pertaining to the transferred vehicle must be transferred;
- On multi-vehicle policies, policy level endorsements on the policy and the full premiums must be transferred with the vehicle ceded;
- Any non-standard endorsements must be approved by the Superintendent of Insurance;
- Only endorsements approved by the Superintendent of Insurance are eligible for transfer to the RSP. Transfer of a risk with any unapproved endorsements will render the risk ineligible for transfer to the RSP or continuance in the RSP;
- Endorsement premiums associated with permission for risks to carry paying passengers for a Transportation Network Company is ineligible for transfer to the RSP.

F. Restrictions and Transfer Limit

- Risks are ceded into the RSP at 100%;
- The transfer limit for each member is 5% of the previous year's total voluntary private passenger non-fleet Third Party Liability direct written car years;
- Within a calendar year, members must not at any time exceed the transfer limit of their previous year's total voluntary private passenger non-fleet Third Party Liability direct written car years;
- Once prior year data is available, monthly reports that include the percentage calculated against members previous year's total car years are distributed;
- When a risk is new to the RSP and/or a risk is reinstated or cancelled is transmitted to the RSP, the members transfer limit will be updated;
- A member approaching the 5% transfer limit receive warnings from the Facility Association via e-mail. Members can expect to receive warnings from approaching 85%, 90% and 95% of the transfer limit. Transfer limits are enforced at a group level and members can review their respective transfer limits at either a company or a group level on the Facility Association portal;
- Once a member has reached 100% of the transfer limit, further attempts to transfer any new risk to the RSP will be rejected and the risk will remain on the member's own account;
- Members may submit a written appeal to the Provincial Operating Committee for an exception to exceed the 5% limit. The Provincial Operation Committee will review the member's appeal and make a recommendation to the Facility Association Board of Directors ('The Board'). The Board will make a decision whether to grant members request.

G. Compliance Audits

The Facility Association Plan of Operation provides for auditing of all member companies using the RSP. The objective of the compliance audits is to provide reasonable assurance that:

- Risks ceded to the RSP are eligible by way of vehicle type or rating classification;
- Appropriate verification of the risk's eligibility was undertaken by members;
- The appropriate premium and claims was transferred to the RSP;
- Risks transferred in accordance with established procedures for transfer dates, coverages, cancellation dates, etc.

Should an audit uncover that a risk transferred to the RSP was found to have qualified under member's approved underwriting rules for declining risks, members will be required to remove the risk (premiums and claims) from the RSP effective the transfer date. Members must provide auditors with the approved underwriting rules for declining risks in the members' voluntary market.

Prior Experience or Motor Vehicle Reports (MVR)

Members that are in non-compliance with ordering MVRs on all listed operators, or a prior experience reports will be required to provide reports during the audit activity. Should the information on the reports confirm that a risk was ineligible at the date of transfer, members will be required to remove the risk (premium & claims) from the RSP effective the date of transfer.

Documentation

Members must either retain documents either electronically or paper. Auditors may require members to provide reports to validate information on policies ceded to the RSP.

Members' may be required to obtain information where members' records are in abeyance for information pertaining to a risk and that information is outstanding. Should the audit determine that the information renders the risk ineligible for the RSP; members will be required to remove the risk effective the date transferred to the RSP.

Brokers and/or Agents

Where brokers/agents order and retain MVR and prior experience reports in their offices, auditors may request copies for their records. Auditors may also request copies of applications for those policies in-force (not exceeding a 2-year period).

H. Sunset Clause

Facility Association Audits

Facility Association auditors usually select risks from members RSP portfolio within a 2-year period of their audit activity. Risk transferred to the RSP beyond the 2-year period will not be subject to audit.

Member Audits

Members that conduct an audit risks in the RSP and that audit identified ineligible risks or transactions; members are required to remove premiums and claims with transfer dates within the 2- year period effective from the date of their audit.

Risks with Claims

Any risk in the RSP that has a claim (any type) after transfer to the RSP; the policy and the claim must remain in the RSP until the next renewal date 'unless' the policy is cancelled by the insured. The exception to the aforementioned is the following:

- Where members are directed by an approved rule or during an audit to remove a risk
- When a vehicle is ineligible for the RSP such as commercial or recreational vehicle

Exceptions to the Sunset Clause

The 'Sunset Clause' does not apply when:

- It is determined that a member committed willful misconduct
- Not applicable to claims

Failure to Comply

If it is determined that a risk submitted to the RSP did not meet the criteria for submission in that:

- MVR was not ordered or was not ordered within the required timeframe, or;
- Prior experience report was not ordered or was not ordered within the required time frame , or;
- The appropriate supporting documentation was not retained for audit.

Members will be required to obtain the appropriate reports or submit documentation to auditors. If it is determined then that a risk was ineligible for transfer at the date of transfer, the risk (premiums and claims); members must remove the risk from the RSP effective the date transferred. Risks may remain in the RSP, subject to such additional fees or charges as may be established from time to time by the Board of Directors;

Where it is determined that a member is non-compliant ordering reports and/or adopted a practice that fails to provide assurance with its obligations, that member will be dealt with as an exception. A full audit may be requested by the Facility Association President & CEO;

A member will be billed for the cost of an audit where it is determined that a full audit of all risks transferred by the member is appropriate;

The members expense factor allowance may be reduced two-percentage points for a period of six- months where an audit demonstrates to the satisfaction of the Board of Directors that there has been a general failure to order the required reports on within the required timeframe;

Flagrant or continued failure to comply with obligations may result in a penalty/directive to remove all risks from the RSP. The member will receive a directive after review by the Facility Association President & CEO and approval by the Board.