



COMMONWEALTH AUTOMOBILE REINSURERS

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RALPH A. IANNACO  
PRESIDENT

**ADDITIONAL INFORMATION**

**TO MEMBERS OF THE MAIP STEERING COMMITTEE**

**FOR THE MEETING OF:**

**Tuesday, May 18, 2010 at 10:00 a.m.**

**MSC**

**10.10 Cancellation for Material Misrepresentation**

Attached is a proposal to amend Assigned Risk Company Performance Standards as well as amendments to Rules 26, 28, 30, and 31 to address issues raised by Commissioner Murphy in correspondence dated March 26, 2010. (Docket #MSC10.10, Exhibits #4 & 5)

PAMELA WALLACE  
Vice President - Residual Market Services

Attachments

Boston, Massachusetts  
May 13, 2010

May 13, 2010

## **DRAFT**

### **ASSIGNED RISK COMPANY PERFORMANCE STANDARDS PROPOSAL**

CAR has established performance standards and procedures for monitoring Assigned Risk Company (ARC) compliance with MAIP Rules of Operation. Modifications to the performance standards are proposed in order to provide an administrative remedy in response to issues raised in correspondence received from the Commissioner of Insurance concerning the cancellation for misrepresentation of a policy assigned through the MAIP.

1. The performance standards have been modified to incorporate the following provisions:

- The ARC may not cancel a policy for non-payment of premium if such premium deficiency is the result of an insufficient down payment. The ARC shall bill the policyholder for the amount of the deficiency, or otherwise incorporate the amount in future premium installments. If the policyholder fails to pay the minimum amount due, then the ARC may issue a statutory notice of cancellation for non-payment of premium.
- Division of Insurance Bulletin 1999-02 states in part that, “in order to prevent wrongful cancellations, if during the underwriting process an insurer discovers third-party information that appears inconsistent with the information provided on the application for insurance, the insurer shall 1) initiate an inquiry either directly with the insured or through the producer of record to resolve any factual errors; and 2) obtain the insured’s consent before issuing a notice of adjustment to the down payment and/or total premium. If the inquiry is made directly to the applicant the producer of record should be copied.” The full text of Bulletin 1999-02 may be found in the Industry Services section of the Division of Insurance website.
- If the resolution of an apparent inconsistency results in a change to information used to calculate premium, the ARC shall charge an appropriate premium based upon the additional or corrected information, and adjust the applicant’s next bill accordingly. If however, the applicant is unwilling to consent to the modification, and the ARC has independent evidence that the applicant had the actual intent to deceive with such deception increasing the ARC’s risk of loss, the ARC may cancel the policy as provided by Massachusetts law.
- A copy of each cancellation notice issued by an ARC shall be furnished to the producer of record.

- If the reason for a cancellation or non-renewal has been remedied prior to the effective date of the cancellation or non-renewal, the ARC shall reinstate the policy or issue the renewal policy.
2. Non-compliance review procedures have been modified and penalty provisions have been added:
- The timeframe for an ARC to respond to a complaint has been changed from 20 calendar days to 5 business days from the receipt of the complaint.
  - The ARC will be required to notify CAR of corrective action within 5 business days of the receipt from CAR requesting remedial action.
  - Penalty provisions have been added to address repeated instances of non-compliance, with separate penalties for violations involving commission payments, wrongful cancellation, failure to provide a copy of a cancellation notice to the producer of record, or failure to reinstate a policy or issue a renewal policy if the reason for a cancellation or non-renewal has been remedied.
3. The Assigned Risk Company Complaint Form has been modified as follows:
- Wrongful cancellation has been added.
  - Failure to provide to the ARP a copy of each cancellation notice issued has been added.
  - Failure to reinstate a policy or issue a renewal if the reason for a cancellation or non-renewal has been remedied prior to the effective date.
  - The notation indicating the timeframe for the response from the ARC has been changed from 20 calendar to 5 business days.

## Attachments

## **DRAFT**

### **ASSIGNED RISK COMPANY PERFORMANCE STANDARDS**

#### **A. Policy Issuance**

The Assigned Risk Company (ARC) must issue a policy within 15 calendar days of the receipt of a completed application and any supplemental information needed to verify and appropriately calculate the premium for the coverages requested.

#### **B. Endorsements**

Any endorsement to an assigned policy, which includes all information necessary for processing, shall be issued within 15 calendar days of receipt.

#### **C. Return Premiums**

Return premium checks must be mailed within 30 calendar days of the effective date of the cancellation or endorsement generating the return.

#### **D. Policy Changes**

If policy changes are mailed directly to the insured, copies must be furnished to the Assigned Risk Producer.

#### **E. Claims Performance**

Claim adjustment practices and procedures shall be in accordance with the established Performance Standards and shall correspond with those followed for voluntarily written business.

#### **F. Premium Disputes**

The ARC shall reply within 15 calendar days to letters disputing the premium charged.

#### **G. Certificates of Insurance**

The ARC shall, at the request of the named insured or producer of record, issue certificates of insurance. Such certificates must be provided within four business days after receipt of a request for same.

#### **H. Commissions**

Commission shall be paid no less frequently than monthly and shall be paid within 15 calendar days after the close of the month in which the commission was credited to the producer's account. Each payment will include a commission statement that contains the policy number, named insured, and amount of premium on which the commission has been calculated.

#### **I. Cancellation – Insufficient Down Payment**

The ARC may not cancel a policy for non-payment of premium if such premium deficiency is the result of an insufficient down payment. The ARC shall bill the policyholder for the amount of the deficiency, or otherwise incorporate the amount in future premium installments. If the policyholder fails to pay the minimum amount due, then the ARC may issue a statutory notice of cancellation for non-payment of premium.

**J. Cancellation - Misrepresentation**

To prevent wrongful cancellation, if during the underwriting process an ARC discovers third-party information that appears inconsistent with the information provided on the application for insurance, the ARC shall 1) initiate an inquiry either directly with the insured or through the producer of record to resolve any factual errors; and 2) obtain the insured's consent before issuing a notice of adjustment to the down payment and/or total premium. If the inquiry is made directly to the applicant the producer of record should be copied.

If the resolution of an apparent inconsistency results in a change to information used to calculate premium, the ARC shall charge an appropriate premium based upon the additional or corrected information, and adjust the applicant's next bill accordingly. If however, the applicant is unwilling to consent to the modification, and the ARC has independent evidence that the applicant had the actual intent to deceive with such deception increasing the ARC's risk of loss, the ARC may cancel the policy as provided by Massachusetts law.

**K. Cancellation Notices**

A copy of each cancellation notice issued by an ARC shall be furnished to the producer of record.

**L. Reinstatement**

If the reason for a cancellation or non-renewal has been remedied prior to the effective date, then the ARC shall reinstate the policy or issue the renewal.

## **DRAFT**

### **NON-COMPLIANCE REVIEW AND PENALTY PROCEDURES**

#### **A. Violation Reporting**

Assigned Risk Company Non-Compliance Forms should be completed online by an ARP. The form should simultaneously be submitted to CAR and the individual designated by the Assigned Risk Company (ARC) for which the violation(s) is being reported. The ARC will have 5 business days to respond to CAR regarding the violation. The ARC shall forward a copy of the response to the ARP.

#### **B. Compliance Review**

Subsequent to an ARC response to a violation reported by an ARP, or the lapse of 5 business days lacking a response, CAR will review the complaint and any supporting documentation to determine the validity of the reported violation.

CAR shall assess the alleged violation(s) and resulting response to determine what course of remedial action may be necessary.

#### **C. Warning – Remedial Action**

If CAR determines the ARP complaint to be valid, or such complaint remains outstanding, CAR shall notify the ARC of the failure to comply with the approved performance standard(s) and request that the ARC institute corrective measures. The ARC will be required to notify CAR of corrective action, in writing within 5 business days and may be required to address remedial action in a meeting with CAR staff and/or a committee of CAR.

#### **D. Penalty Provisions**

On a monthly basis CAR will perform an analysis of each ARC's compliance. If the number of validated infractions exceeds the established tolerance a penalty will be assessed. This provision applies for failing to comply with the following performance standards: Policy Issuance, Endorsements, Return Premium, Policy Changes, Claims Performance, Premium Disputes or Certificates of Insurance. A penalty will continue to be assessed for each month that an ARC exceeds the established tolerance.

A separate penalty per occurrence will be assessed commencing in the second month after a request for remedial action if the ARC continues to be non-compliant with the following performance standards: Commissions, Cancellation – Insufficient Down Payment or Misrepresentation, Cancellation Notices or Reinstatement. This penalty will be assessed monthly until the ARC is in complete compliance.

**NOTE:** *The tolerance levels and penalty amounts will be determined by a Subcommittee with a recommendation developed for consideration at the June Governing Committee meeting*

#### **E. Non-Compliance**

Subsequent and repeated non-compliance by an ARC with the performance standards will result in notification of such non-compliance to the Commissioner of Insurance.

**COMPLAINT FORM - ASSIGNED RISK COMPANY**

Assigned Risk Company: \_\_\_\_\_

Insured Name (MAIP Policy): \_\_\_\_\_

MAIP Application Certification No.: \_\_\_\_ - \_\_\_\_ - \_\_\_\_

Assigned Risk Company Policy No.: \_\_\_\_\_

**Select one or more of the following:**

\_\_\_\_\_ **Policy Processing Delay** (original policy or subsequent endorsement not issued within 15 calendar days of the receipt of the assigned application or endorsement request, which includes any supplemental information necessary to process the request, certificate of insurance within 4 business days of request)

\_\_\_\_\_ **Return Premium** (within the 30 calendar days of the effective date of the cancellation or endorsement that results in a refund)

\_\_\_\_\_ **Policy Changes** (copies must be furnished to the ARP if furnished directly to the policyholder)

\_\_\_\_\_ **Premium Dispute** (failure to respond within 15 days of receipt of the complaint)

\_\_\_\_\_ **Claims Performance** (provide details below)

\_\_\_\_\_ **Commissions** (no less frequently than monthly and within 15 days after the close of the month in which the commission is credited to the producer's account)

\_\_\_\_\_ **Wrongful Cancellation** (insufficient down payment, material misrepresentation, provide details below)

\_\_\_\_\_ **Cancellation Notices** (copies must be furnished to the ARP)

\_\_\_\_\_ **Reinstatement** (failure to reinstate if the reason for cancellation or non-renewal has been remedied prior to the effective date)

\_\_\_\_\_ **Other** (note below and provide details of complaint)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Detail action taken to resolve or mitigate the complaint, include name(s) of company representative(s) contacted:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Assigned Risk Producer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Assigned Risk Producer Agency No.: \_\_\_\_\_ Email Address: \_\_\_\_\_

Send completed form to Commonwealth Automobile Reinsurers via email [maipsupport@commauto.com](mailto:maipsupport@commauto.com), or fax 617-880-7298. At the same time, send a copy to the Assigned Risk Company.

**Response from the ARC must be issued within 5 days of receipt of complaint**

<b>CAR</b>	<b>Rules of Operation</b>
<b>Rule 26</b>	<b>Policyholder Rights and Responsibilities</b>
<b>Revision Date</b>	<b>2009.06.19</b>
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**A. Eligibility Requirements**

1. Applicants Eligible for the Massachusetts Automobile Insurance Plan (MAIP)

- a. A completed, signed application for assignment submitted to the MAIP shall constitute a certification by the applicant, or his duly authorized agent submitting the application on his behalf, to the effect that the applicant has attempted within 15 days prior to the date of application to obtain Motor Vehicle Insurance in the voluntary market and that he has been unable to obtain such insurance through a voluntary policy.
- b. An application shall be considered in good faith if the applicant reports all information of a material nature and does not intentionally make incorrect or misleading statements in the prescribed application form, or does not fall within any of the prohibitions or exclusions pursuant to Section A.3. of this Rule.
- c. The MAIP shall be available to residents and non-residents of the state only with respect to motor vehicles that are registered or will be registered in the state within 15 days, except that non-residents who are members of the United States military forces shall be eligible with respect to motor vehicles registered in other states provided such military non-residents are stationed in this state at the time application is made and are otherwise eligible for insurance under the Plan.

2. Motor Vehicles Eligible for Assignment

The MAIP shall accept for assignment applications to insure all types of motor vehicles that may be insured under a standard Private Passenger Motor Vehicle Insurance policy approved for use by the MAIP.

3. Applicants not Eligible for the MAIP

- a. No Assigned Risk Company (ARC) is required to offer or continue insurance to any applicant or insured in any of the following circumstances:

**CAR** | **Rules of Operation**  
**Rule 28** | **Application Process**  
**Revision Date** | **2010.02.19**  
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**A. Submitting an Application to the MAIP**

To obtain MAIP coverage for an Eligible Risk an Assigned Risk Producer (ARP) must submit an electronic application for private passenger motor vehicle insurance coverage to the MAIP.

ARPs must assure that the application for insurance through the MAIP is submitted on the prescribed form and that each application is completed accurately and thoroughly. An ~~incomplete or incorrect~~ application that contains information the MAIP verifies as incorrect or an incomplete application will be returned to the producer for remedy. Once the application for coverage through the MAIP is received and all required information for ~~issuance of the~~ assignment of the policy is provided, the MAIP will assign a certification number to the application.

**B. Assignment of Application to a Member**

An application with a certification number will be randomly assigned to a Member based on its Quota Share as specified in Rule 29 – Assignment Process. The MAIP will notify the ARC of the policy assignment. The MAIP will notify the ARP of the identity of the ARC which will issue the policy and the effective date of the coverage.

Once the policy has been assigned to an ARC, after receiving such notice, the ARP is responsible for providing the ARC with the following items within two working days as specified in Rule 31.B.2:

1. The original application form, signed by the applicant and the ARP; and
2. The required deposit premium as specified below.

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- e. Maintain a special investigative unit to investigate suspicious or questionable motor vehicle insurance claims for the purpose of eliminating fraud;
- f. Report all required information to the MAIP in an accurate and timely manner;
- g. Adopt and maintain a plan approved by the Commissioner providing for direct payment by the insurer to the insured under collision, limited collision, comprehensive, and fire and theft coverages; and
- h. Use the policy forms, endorsements, new business application and renewal questionnaire filed by the MAIP with and approved by the Commissioner for use in private passenger motor vehicle insurance.

**B. Responsibilities**

Nothing in this Rule shall be construed to affect the rights of any Member to enter into any third party contractual agreement for the purpose of servicing its voluntary business. Nothing in this Rule shall be construed so as to relieve any Member of its Quota Share or its share of the administrative expenses of the MAIP, as required by G.L. c. 175, § 113H. A Member appointed as an ARC is required to perform the following responsibilities in its capacity as an ARC:

1. An ARC must provide quality service to policyholders assigned through the MAIP by maintaining the standards established as a condition of appointment under Section A.1 of this Rule. Policies and other forms mailed to policyholders shall be the same as those filed by the MAIP and approved by the Commissioner for private passenger motor vehicle business. An ARC shall provide the same level of service to policies assigned to it through the MAIP as it provides to policies it issues voluntarily.

**CAR** | **Rules of Operation**  
**Rule 30** | **Assigned Risk Company Requirements**  
**Revision Date** | **2009.06.19**  
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2. An ARC shall bill the premium for a policy ~~issued~~assigned through the MAIP that is the lesser of the premium calculated using the ARC's rates applicable to that policy if the ARC or its affiliates had issued the policy in the voluntary market and the premium calculated using the MAIP rates on file with the Commissioner. For the purposes of this comparison:
  - a. The ARC, though its affiliated companies, shall quote risk-specific premiums based on the rates applicable to its voluntary policies for any eligible risk obtaining insurance through the MAIP.
  - b. The ARC must use voluntary private passenger motor vehicle insurance rates that are based primarily on actual loss and expense experience for risks voluntarily insured.

The calculation of the premium assigned through the MAIP shall be based on information contained in the application. Premium may be adjusted to account for information verified by the ARC that differs from information provided on the original application when submitted to MAIP. Notification of the premium adjustment shall be provided to the policyholder and the ARP.

3. No companies within an insurer group under the same management or ownership or both may provide a different level of service through a company within the group that is not an ARC than is provided to policyholders insured by a company with the group that is an ARC.
4. General Duties

ARCs shall perform the following general duties.

- a. Confirm operator driving licenses and records in order to administer the MAIP merit rating plan and its own merit rating plan accurately;
- b. Verify eligibility criteria;

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- c. Verify that ~~representations~~-information contained in the application for insurance ~~are~~-is accurate as to classification, garaging, discounts, credits, vehicle use, ~~and~~-vehicle description, and, to the extent verifiable, other rating factors;
- d. Assure that a policy has been issued for each RMV-1 and/or RMV-3 certificate and that the policy effective date and the certification date are the same;
- e. Implement procedures to assure collection of premiums billed;
- f. Comply with the terms and conditions of premium finance notes and/or agreements submitted to the ARC on behalf of applicants for insurance, by the producer or by a premium finance company licensed under the laws of the Commonwealth of Massachusetts;
- g. Ensure that there is communication among the ARC's Underwriting, Claims, and SIU Departments and that any discrepancies in information are shared promptly among the departments and documented;
- h. Maintain and forward to the MAIP a copy of all written complaints filed with the ARC regarding the service provided by the ARC or any ARP; and
- i. Monitoring of Assigned Risk Producers

ARCs will be responsible for notifying the MAIP of ARP infractions that may result in the revocation of the ARP's MAIP certification as follows:

- (1) Failure to maintain a valid producer's license as issued by the Division of Insurance;
- (2) Willful misappropriation of premium due an ARC in accordance with the provisions of the MAIP Rules of Operation;

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- (3) The entry of a finding, by a court of competent jurisdiction that the producer has engaged in fraudulent activity in connection with the business of motor vehicle insurance;
- (4) Failure to remit payments to an ARC on a timely basis in accordance with the MAIP Rules of Operation;
- (5) Failure to notify the ARC of any suspected fraud in the application for insurance or in the underwriting or rating process or in the payment of premium obligations or surrounding a loss;
- (6) Failure to assist the ARC during any audit or investigation;
- (7) Failure to report all coverages bound within two (2) working days of the effective date of coverage;
- (8) Failure to comply with reasonable procedures as required by the MAIP for processing claims, remitting premiums and requesting coverages;
- (9) Failure to adhere to a directive issued by the Commissioner relative to the charging of service fees;
- (10) Failure to provide a reasonable and good faith effort to verify the information provided by the applicant, including rating and licensing data;
- (11) Failure to comply with applicable agency requirements and procedures, as prescribed in the MAIP Rules of Operation; and
- (12) Failure to comply with all of the provisions of the Rules of Operation and Manual of Administrative Procedures.

#### **45.** Reporting Requirements

On a monthly basis, ARCs must report all premiums written, and any other information that may be required by the Plan, Rules or Manual of Administrative Procedures.

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**56.** Continuation of Eligibility as an ARC

An ARC must maintain a viable book of voluntarily written private passenger motor vehicle insurance policies. The Commissioner may terminate any ARC if he or she finds that disruptive reductions in voluntarily issued motor vehicle policies are in violation of this section.

**C. Procedures for Voluntary Writing of Risks from the MAIP**

1. Voluntary Writing by an ARC of Its Own Policyholder Insured through the MAIP.

a. Eligibility

A risk is eligible if it is currently insured through the MAIP.

b. Offer to Write

The kinds and amounts of coverage to be offered for such voluntary risks shall not be less than those afforded by the policy being replaced unless the insured refuses such kinds and amounts of coverage.

c. Notification to the Producer of Record

The producer of record must be mailed notification of such offer ninety (90) days prior to expiration, which shall contain the premium quotation to be offered. The policyholder shall be mailed the offer for voluntary coverage forty-five (45) days prior to expiration with copy to the producer of record.

Following such offer to write, the ARC shall have no further obligations to the policyholder or to the producer of record if the policyholder obtains replacement insurance from another Member.

If such replacement coverage is obtained by the producer of record within the period of his or her forty-five (45) day advance notice, the producer of record shall notify the assigned ARC and it shall not make an offer to the policyholder.

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<b>Rule 31</b>	<b>Assigned Risk Producer Requirements</b>
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- d. has not been convicted of a crime related to his occupation as an insurance producer;
- e. has not had his license to engage as an insurance producer revoked or suspended;
- f. has not been involved in a material and substantial breach of a contract between an ARC and a producer;
- g. is not in default in the remittance of any motor vehicle premiums due a Member;
- h. agrees to comply with the provisions of the Plan of Operation, the Rules of Operation, the Manual of Administrative Procedures, the MAIP's certification requirements, and the applicable regulations of the Division of Insurance;
- i. agrees to notify the MAIP of an agreement to sell the agency 15 days in advance of the proposed closing of any such sale; and
- j. has not had an ARP certification revoked by the MAIP as provided in these Rules, the revocation not having been reversed by the Governing Committee, the Division of Insurance or a court of competent jurisdiction.

**B. Ongoing Assigned Risk Producer Requirements and Responsibilities**

It will be the ongoing responsibility of an ARP to fulfill the following requirements as well as the producer certification requirements in Section A. above. Failure to do so will be grounds for revocation of certification.

<b>CAR</b> <b>Rule 31</b> <b>Revision Date</b> <b>Page</b>	<b>Rules of Operation</b> <b>Assigned Risk Producer Requirements</b> <b>2009.06.19</b> <b>3 of 9</b>
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1. The ARP must use the policy forms, endorsements, new business application and renewal questionnaire that are filed by the MAIP and approved for use by the Commissioner for Private Passenger Motor Vehicle Insurance.
2. The ARP must require that all Eligible Risks applying for insurance coverage by the MAIP complete a new business insurance application in its entirety.
3. The ARP must ensure that the application for insurance through the MAIP is submitted on the prescribed forms and that each application is filled out accurately and in its entirety. An ~~incomplete or incorrect~~ application that contains information the MAIP verifies as inaccurate or an incomplete application will be returned to the producer for remedy. Steps that the ARP must take in order to complete an application correctly include the following:
  - a. The ARP must list all licensed operators in the household, including those not used for classification purposes, on the application;
  - b. The ARP must verify through the Registry of Motor Vehicle Inquiry System the driver's license for each listed operator who holds a Massachusetts driver's license. The ARP must submit a photocopy of the license of any operator holding an out-of-state or an out-of-country driver's license with the new business application.
  - c. The ARP must supply documentation supporting the deferral for rating purposes of any household member;
  - d. The ARP must confirm each licensed operator's driving record for rating and statistical data collection purposes;
  - e. The ARP must verify that the Eligible Risk has not been and is not now in default in the payment of any Motor Vehicle Insurance premiums in the past 24 months;
  - f. The ARP must certify, pursuant to Rule 26.A.1.a., that the risk has made an attempt to obtain Private Passenger Motor Vehicle Insurance within 15 days of the application to the MAIP and has been turned down for such insurance;

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- g. The ARP must include the full and complete address of the Eligible Risk. A post office box will not be accepted for the determination of garaging town;
  - h. The ARP must verify eligibility for premium discounts through the Registry of Motor Vehicles or other appropriate sources;
  - i. The ARP must order only those coverages from the ARC requested by the Eligible Risk, for which he may be eligible through the MAIP;
  - j. The ARP must quote the proper MAIP premium based on information provided by the Eligible Risk for the coverage desired. The ARP must inform the Eligible Risk that the final premium billed by the ARC may be less than the MAIP premium quoted, but it may not be more;
  - k. The ARP must notify the Eligible Risk that he has the option of utilizing an installment payment plan;
  - l. The ARP must verify that the Eligible Risk has signed the new business application before it is submitted to the MAIP; and
  - m. The ARP must sign the new business application before it is submitted to the MAIP.
4. The ARP must submit an electronic application for Private Passenger Motor Vehicle Insurance coverage to the MAIP to obtain MAIP coverage for an Eligible Risk.
5. Once the MAIP has notified the ARP of the certification number assigned to the application, of the ARC to which the policy is assigned and of the effective date of the coverage, the ARP is responsible for providing the ARC with the following items within two business days:
- a. The original application form, signed by the Eligible Risk and the ARP; and
  - b. The required deposit premium pursuant Rule 28.