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RALPH A. IANACO
PRESIDENT

January 3, 2008

BULLETIN NO. 861

Order on Proposed Amendments to Rules of Operation 23, 26, 28, and 30

The Division of Insurance has issued an Order on the proposed amendments to Rules of Operation 23, 26, 28, and 30, Docket No. C2007-03.

The amendment to Rule 23, as approved by the Division of Insurance, provides that a Member declining to write a risk voluntarily must provide the reason for the declination in writing to the applicant either directly or through the producer within a reasonable time after the decision is made.

The Order on the proposed changes to Rule 26 corrects the reference to the AIB Manual to a reference to the MAIP Manual at Rule 26.A.2. The Order approves the amendment to Rule 26.E. regarding the cancellation procedures applicable to MAIP policies, thereby making these procedures consistent with those of Rule 18 of the Massachusetts Private Passenger Automobile Manual. The Order disapproves that part of the proposed amendment that would have deleted language in Rule 26.E. which states that nothing in the MAIP Rules changes the statutory obligations of companies to their producers or policyholders with regard to policy non-renewal or cancellation.

The Order approving the proposed amendment to Rule 28 allows carriers to use installment payment plans that have been approved by the Division of Insurance provided that no more than a 25% deposit payment or first payment and no less than seven monthly payments thereafter are required. The Division has also ordered that carriers may only charge the same flat fee per installment that is used by the carrier in the voluntary market and that the fee cannot exceed \$6.00 per installment. No fees based on an annual percentage rate may be charged on MAIP business.

The Order approves the proposed amendment to Rule 30 insofar as it continues the producer/consumer relationship after an insured elects to write a residual market insured voluntarily; but only for the transitional period of April 1, 2008 to March 31, 2009, and disapproves the amendment as it pertains to commissions substituting a requirement that the carrier must pay a commission based on the commission structure for policies written in the voluntary market as applied to the voluntary market premium, regardless of whether a contract exists between the licensed producer of record and the voluntary insurer.

The Order and revised Rules as they appear in the Appendix to the Order are attached.

JOSEPH J. MAHER, JR.
Vice President, General Counsel & Secretary

Attachments

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Commonwealth Automobile Reinsurers'
Proposed Amendments to Rules of Operation 23, 26, 28 and 30 of the
Massachusetts Automobile Insurance Plan
Docket No. C2007-03

Order on Proposed Amendments

Introduction

On September 19, 2007, the Governing Committee of Commonwealth Automobile Reinsurers ("CAR") voted to amend Rules 23, 26, 28 and 30 (the "proposed Amendments") of the Massachusetts Automobile Insurance Plan ("MAIP") Rules of Operation that the Commissioner of Insurance ("Commissioner") approved in a Decision dated July 16, 2007 (the "*July 16 Decision*"). Pursuant to Article X of the CAR Plan of Operation, CAR submitted the proposed Amendments to the Commissioner for her approval. By letter dated October 19, 2007, the Commissioner informed CAR that she disapproved the proposed Amendments. Contemporaneously, she issued a hearing notice scheduling a public hearing on the proposed Amendments for December 4, 2007.

Ten individuals representing CAR, insurance companies, producer associations and consumer advocacy organizations made oral comments at the December 4 hearing. In addition, the Division of Insurance ("Division") received seven written statements commenting on the proposed Amendments, as well as provisions in the MAIP rules to

which CAR had not proposed amendment.¹ The hearing record was kept open until 5:00 p.m. on December 4. One insurer submitted a written post-hearing statement.

The proposed Amendments address four specific aspects of the MAIP: 1) the obligation of a CAR member to provide to consumers who have been denied voluntary insurance a written notice of the reasons for the rejection; 2) provisions for calculating return premiums when a policyholder cancels a MAIP policy; 3) installment payment plans applicable to policies written through the MAIP; and 4) continuation of the producer/consumer relationship when a MAIP insured is provided insurance in the voluntary market.

Discussion, Analysis and Conclusions

A. Rule 23

CAR proposes to eliminate Rule 23.A.2, which requires a member company that declines to write a risk voluntarily to provide the reason for the declination to the applicant in writing before referring the risk to the MAIP. The amendment, CAR asserts, is intended to make Rule 23 consistent with Rule 26.A.1.a, which provides that, by submitting a completed, signed application to the MAIP, the applicant certifies that he or she has attempted, without success, to obtain insurance in the voluntary market within 15 days prior to the date of the MAIP application. Oral comment at the hearing indicated that CAR is concerned that the purported inconsistency between these two rules could result in confusion. Specifically, CAR indicated that an applicant could misconstrue Rule 23.A.2 to require the *applicant* to obtain the company's written notice of declination prior to his or her submission to the MAIP and that such written notice of declination would be required to be submitted with the MAIP application. Furthermore, there was comment as to confusion regarding whether a member company would be required to provide a written notice of reasons for declination in all instances under Rule 23.A.2, or only when asked to do so by a consumer.

Oral comment from consumer advocates and a written statement from the Attorney General urged the Commissioner to require insurers to provide a written statement of reasons each time an applicant is declined, rather than require it only if the applicant requests such information. They asserted that written notices would alert

¹ Several statements commented on provisions in MAIP Rule 28 that relate to Limited Assignment Distribution Companies (LADCs).

consumers to any inaccurate or incomplete information, and also would be useful for monitoring industry practices regarding policy declination.

Additional comments at the hearing from the chair of CAR's MAIP Steering Committee clarified that, in making its proposed amendment to Rule 23.A.2, CAR did not intend to relieve its members of their obligation to inform consumers of the reasons for declining to write insurance if asked by consumers, but, rather, was concerned about the current language of the rule requiring those reasons to be disclosed to the applicant in writing *prior* to referring the risk to the MAIP. CAR counsel similarly stated that it was the temporal provision of Rule 23.A.2, which would require written disclosure to the consumer "prior to referring the risk to the MAIP," that was the crux of CAR's concern with Rule 23.A.2 as currently written.

Hanover Insurance Group ("Hanover"), in a supplemental statement submitted after the hearing, commented that any requirement mandating that a company provide the reason for declination of a risk to the consumer would be burdensome. It stated that the producer is in a better position to issue such disclosures than the company because it is the producer who actually makes the decision to decline the applicant. Hanover further asserted that consumers would be better served by learning the reasons for declination from producers, rather than by receiving a written document setting forth those reasons from an insurer.

Analysis and Conclusion

We do not find the provisions of MAIP Rules 23 and 26 to be inconsistent. These rules involve different parties and different obligations. Rule 26, approved by the Commissioner in her *July 16 Decision*, incorporated a self-certification procedure to streamline the MAIP application process for consumers who have been unable to obtain voluntary insurance.² This self-certification obligation lies solely with the consumer. Conversely, Rule 23 identifies a company's obligation to disclose to the consumer the reason or reasons why the company chose to decline the consumer's business. These are mutually distinct provisions and each is important in its own right.

Appendix A to the *July 16 Decision* affirms the importance of informing consumers of the reasons why they have been declined voluntary coverage. Requiring

² An earlier version of Rule 26.A required an applicant for MAIP coverage first to obtain a declination letter from an insurer.

insurers to provide this information when the decision is made to decline voluntary coverage is consistent with the statutory requirement that insurers, if they choose to non-renew a policy, must advise the insured of the reasons for the non-renewal in writing. Companies are required under the current MAIP Rule 23 to issue reasons for declination in all instances and not only when requested to do so by a consumer. Educating consumers as to why they may not be good risks may help to improve their driving behavior. Deletion of the temporal provision of Rule 23 will clarify that the reasons for declination need not be provided to the consumer *prior* to the consumer's application to the MAIP. The insurer may issue such written notice to the consumer within a reasonable period of time after such application is submitted.

As for the limited comments that some insurers believe that the reasons for declination should emanate from the producer rather than from a CAR member, we disagree. The responsibility for providing this information lies with the insurer, not the producer, although the insurer may delegate responsibility for sending these notices to its producers. Regardless of how it is provided, the companies bear full responsibility for ensuring that all consumers who are denied motor vehicle coverage in the voluntary market are provided the reasons for such declination in writing within a reasonable time after their application is submitted to the MAIP. A redrafted amendment to Rule 23 is included in the Appendix to this decision.

B. Rule 26

CAR proposed to amend Rule 26.A.2 to reference the MAIP Private Passenger Automobile Manual rather than the AIB Manual. It also eliminated language in Rule 26.E that states that nothing in the MAIP Rules changes the statutory obligations of companies to their producers or policyholders with regard to policy non-renewal or cancellation. Finally, CAR replaced the cancellation procedures in Rule 26.E, which were adopted from the AIPSO Uniform Plan, with the cancellation procedures from Rule 18 of the Private Passenger Automobile Manual.³

³ As approved in the *July 16 Decision*, Rule 26.E provided for calculation of a return of premium to a policyholder who requested cancellation of his or her policy at 0.90 of the pro rata earned premium, or \$25 per motor vehicle, whichever was larger. The Rule also established provisions relating to cancellation by an insurer that were not consistent with practices in the voluntary market.

Analysis and Conclusions

No one opposed the proposed amendments to Rule 26. Oral comment at the hearing and the written statements uniformly agreed that the changes to Rule 26.E result in the consistent treatment of consumers written through the MAIP and those insured voluntarily when an insured cancels a policy or a financial institution dishonors an insured's premium check. The proposed amendment also ensures that the same rules for calculation of a return premium will apply to all insureds; in addition, any return premium to a MAIP insured who obtains voluntary coverage will be calculated on a pro rata basis.

We approve CAR's proposed amendment to Rule 26.A that changes the reference from the AIB Manual to the MAIP Private Passenger Automobile Insurance Manual. We disapprove the proposed deletion of the provision in Rule 26.E that nothing in the MAIP Rules changes the statutory obligations of companies to their producers or policyholders with regard to policy non-renewals or cancellations. No comment or statement was submitted to explain the basis for this deletion and we find no benefit in doing so. The remaining proposed amendments to Rule 26.E are approved. A redrafted amendment to Rule 26 is included in the Appendix to this decision.

C. Rule 28

CAR proposes to replace the standard uniform installment payment plan in Rule 28 with a provision that sets minimum requirements for installment payment plans that its members may offer to MAIP policyholders. As amended, Rule 28 would mirror the provisions in CAR Rule 13.A.4 (4), and allow insurers to offer the same installment payment plans to both their MAIP and voluntary policyholders on policies written with effective dates between April 1, 2008 and March 31, 2009.⁴ The current Rule 28, as approved in the *July 16 Decision*, mandates a totally separate installment payment plan for the MAIP, which would require substantial changes in insurers' computer systems and result in two different installment payment plans for voluntary and MAIP business.⁵ Oral comment at the December 4 hearing and the written statements submitted agreed

⁴ Returned check fees or other charges also would be the same in the voluntary and residual markets.

⁵ Producers, despite their stated preference for a uniform residual market installment billing plan, have recognized that it may not be practical to implement such a plan by April 1, 2008. See statements by Frank Mancini, of the Massachusetts Association of Insurance Agents ("MAIA") at the January 5, 2007 meeting of CAR's MAIP Steering Committee.

that the proposed amendment was intended to make the installment payment plans in both the voluntary and residual markets uniform during the initial transition to the MAIP. CAR indicated that it is committed to continuing its consideration of this issue and to developing a MAIP installment payment plan to be used in connection with policies issued with an effective date of April 1, 2009 and thereafter.

Analysis and Conclusions

Rule 28, as approved in the *July 16 Decision*, retained the separate MAIP installment payment plan first approved in the Commissioner's *December 31, 2006 Decision on the MAIP Rules*. CAR first recommended amending Rule 28 in January 2007.⁶ CAR's currently proposed amendment is a compromise between insurers, who prefer to utilize the same installment payment plans for all insureds, and producers, who have stated a preference for a single installment payment plan for the residual market notwithstanding the fact that it differs from the installment payment plan in the voluntary market.⁷ Because this issue is being addressed concurrently with the implementation of managed competition beginning April 1, 2008, and based on the insurers' expressed concern that they do not have sufficient time to change their computer programming prior to that date, we approve CAR's proposed amendment to Rule 28 *in part* and only for the transition year. For MAIP policies with effective dates of April 1, 2008 through March 30, 2009, MAIP insureds will benefit from application of the same rules relating to dishonored checks, late and cancellation fees, minimum number of installment payments, and payment to producers that apply to voluntary insureds. They will be eligible for all the payment options that the company to which they are assigned offers its voluntary insureds, subject to the following constraints. First, the proposed amendment requires revision to comply with the Commissioner's Bulletin 2007-16, which limits carriers to charging on a MAIP policy no more than a twenty-five percent deposit premium based on the MAIP rate for that policy. Second, some company installment payment plans provide for two separate types of finance charges: flat fees per installment and fees based on an

⁶ Because of the Acting Commissioner's January 19, 2007 decision to suspend operation of the MAIP Rules, this proposed amendment was not considered at that time.

⁷ The MAIP Steering Committee, at its September 11, 2007 meeting, continued to address producer concerns, noting that the volume of MAIP business is expected to be no more than 60,000 risks spread over the first twelve months of operation. A producer suggested that posting information about CAR member billing plans on the CAR website would provide producers with immediate access to the terms of those plans.

annual percentage rate (“APR”) applied to the unpaid premium balance. The conditions under which insurers impose on consumers the APR-based finance charges in their installment payment plans may disparately affect the residual market. To avoid that result, for MAIP policies issued with effective dates of April 1, 2008 through March 31, 2009, insurers only may offer to MAIP insureds the same flat fee per installment finance charge plans that they apply to the voluntary market. A revised amendment to Rule 28 to be effective for MAIP policies issued effective April 1, 2008 through March 30, 2009 is included in the Appendix to this decision.

CAR is instructed to submit to the Commissioner by December 1, 2008 proposed amendments to Rule 28 consistent with the provisions of that rule as set forth in the *July 16 Decision*. These proposed amendments, if approved, shall be effective for policies issued effective on and after April 1, 2009.

D. Rule 30

The proposed rule amendment requires an insurer that writes a risk previously insured through the MAIP to recognize the policyholder’s producer of record, until the policyholder terminates his or her relationship with the producer, the producer is decertified or suspended, or the producer is precluded from dealing with other carriers as a result of an exclusive agency contract. The proposed amendment further provides that the producer will be paid a commission by the insurer writing the voluntary policy at the rate applicable to the MAIP policy. This modification is modeled on a rule in the New York Assigned Risk Plan.

The proposed amendment changes the rule approved in the *July 16 Decision*, which removes any obligation of an insurer to a residual market policyholder’s producer of record if the policyholder accepted an offer from that insurer to write the coverage in the voluntary market and the producer of record was not “licensed” by that insurer.

Discussion and Analysis

No speaker or writer objected to the continuation of the producer/consumer relationship when an insurer elects to write a MAIP insured voluntarily. Minutes from the January 12, 2007 MAIP Steering Committee meeting suggest that the members did not reach consensus on the issue of commission payments. MAIA wanted producers to receive the MAIP commission, while the Arbella Mutual Insurance Company preferred the voluntary commission rate. MAIP Rule 37 requires parity in commission payments

for business written through the MAIP with business written voluntarily, but does not regulate commissions on a policy after it is written voluntarily.


The relationships among insureds, insurers and producers developed in a marketplace in which rates have been fixed and established and most producers have access only to one company offering private passenger automobile insurance. Under competitive rating and an assigned risk plan, these relationships will become more fluid. We approve CAR's proposed amendment to Rule 30 in part, insofar as it continues the producer/consumer relationship after an insurer elects to write a residual market insured voluntarily, but limit its application to the MAIP transition period. When the MAIP becomes fully operational, as of April 1, 2011, Rule 30 as approved in the July 16 Decision will take effect.

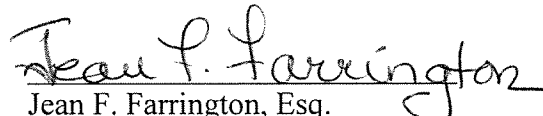
We disapprove those portions of the proposed amendment that relate to commissions. Commissions are to be calculated based on the premium that the consumer actually pays. During the MAIP transition period, an insurer who voluntarily writes a risk that it previously insured through the MAIP must pay a commission to the insured's licensed producer of record in accordance with the insurer's commission structure for policies written in the voluntary market as applied to the voluntary market premium, regardless of whether a contract exists between the licensed producer of record and the voluntary insurer. A revised amendment to Rule 30 is included in the Appendix.

Effective Date:

The revised amendments, as they appear in the Appendix, shall be effective immediately.

January 2, 2008


Stephen M. Sumner, Esq.
Presiding Officer


Jean F. Farrington, Esq.
Presiding Officer

Affirmed: January 2, 2008



Nonnie S. Burnes
Commissioner of Insurance

Rule 23 – Member Obligations

A. Member Obligations

1. Every Member shall be bound by the Plan of Operation and all Rules adopted pursuant to it.
2. A Member declining to write a risk voluntarily must provide the reason for the declination in writing to the applicant either directly or through the producer within a reasonable time after the decision is made.
3. Financial Obligations
 - a. Each Member agrees to pay assessments levied against it for the operating expenses of the MAIP; to pay penalties levied against it under the Rules adopted by the Governing Committee; and to submit in a timely and accurate fashion all statistics, records and accountings required by the MAIP.
 - b. Each Member, in recognition of the absolute necessity for timely payments of balances owed the MAIP, shall pay late payment fees at the prime rate as established by the Federal Reserve Bank of Boston compounded monthly for late payment of any assessment or late payment fees levied in accordance with the Plan or Rules of Operation. Each Member shall also compensate the MAIP for all damages and expenses incurred by the MAIP as a result of the failure of any Member to pay any balance owed the MAIP pursuant to the provisions of Rule 23 or 35, which remains unpaid as of the tenth calendar day following the invoice due date, written notice of the default having been mailed by certified mail to the company by the MAIP on or after the first business day following the invoice due date. Damages and expenses as used herein shall include but not be limited to the MAIP's attorney's fees incurred directly or indirectly with the collection of the balance due, all costs of borrowing incurred as a result of the nonpayment, the cost of all staff time spent in connection with efforts to collect the balance outstanding, all financial losses resulting from nonpayment and all other related expenses and losses.
 - c. Any Member shall be entitled to appeal to the Governing Committee any assessment, or late payment fees, damages or expenses which were levied in accordance with the Plan or Rules of Operation. However, the Member will be required to pay the amount billed by the MAIP before such appeals will be considered. If the Governing Committee rules in favor of the Member, a proper adjustment, including interest at the prime rate and any damages

and expenses assessed, will be made by the MAIP to the Member's account. Before exercising any other right of appeal provided pursuant to G.L. c.175, §113H, the Plan of Operation or Rules of Operation of the MAIP, the Member shall pay all amounts owed to the MAIP.

- d. With respect to Members which have failed to pay assessments, late payment fees or compensatory damages or expenses within forty-five (45) calendar days of the postmark date of the overdue payment notice, a report will be submitted to the Division of Insurance setting forth the fact of such nonpayment for its consideration and, if it deems appropriate, action.
4. When a Member is merged or consolidated into another insurer, or another insurer has reinsured a Member's entire motor vehicle insurance business in Massachusetts, such Member and its successor in interest or such other insurer shall be liable for such Member's obligations. The quota share of the continuing Member will be adjusted to include the business attributable to the merged or consolidated Member.
5. Assigned Risk policies of the transferring Member shall not be subject to cancellation by the Member to which said obligations have been transferred in accordance with the provisions of Rule 29 - Assignment Process; provided however, that nothing set forth herein shall prohibit the cancellation of an Assigned Risk policy pursuant to the provisions defining an eligible risk or the provisions of G.L. c.175, §22C.
6. A Member may terminate its membership in the MAIP upon the surrendering of its license to write motor vehicle insurance policies or bonds in Massachusetts. Terminations of membership shall not discharge or otherwise affect the liabilities of the Member incurred prior to the effective date of the termination of membership or in any way affect the Member's obligation to make payments pursuant to the provisions of Rule 35 – Assessments.
7. If any Member is declared insolvent by a court of competent jurisdiction, its membership in the MAIP shall terminate as of the date it is declared insolvent, but it shall be liable to the MAIP for all obligations incurred under the Plan or these Rules as of the date it is declared insolvent. The MAIP shall compute the amount of such obligations in accordance with these Rules and shall be entitled to offset any liabilities of the Member to the MAIP against any liabilities of the MAIP to the Member.
8. No judgment against the MAIP shall create any direct liability against the individual Members.

9. There shall be an annual meeting of the Members of the MAIP, which shall be held within seventy-five (75) days of the end of the fiscal year at such time and place as is determined by the Governing Committee and specified in the notice of meeting.
10. Special meetings of the Members of the MAIP shall be called at any time by the Governing Committee upon the written request of eight (8) members of the Governing Committee.
11. Written notice of any such meeting of the Members of the MAIP shall be sent to each Member at least ten (10) days before the date fixed for such meeting stating the purpose of the meeting.
12. Minutes of all Governing Committee, Subcommittee (both standing and temporary), and Advisory Committee meetings of the Members of the MAIP shall be sent to all Members, the Governing Committee, producer associations, and the Commissioner.

B. Inactive Member Obligations

An Inactive Member shall receive those distributions from the MAIP which are required by Article X of the Plan of Operation or which otherwise emanate from the Massachusetts Division of Insurance. Inactive Members will not be furnished with other MAIP Bulletins and will not be assigned reporting numbers. Inactive Members must abide by the Plan of Operation and Rules of Operation of the MAIP. At such time as an Inactive Member issues a motor vehicle insurance policy or bond in Massachusetts, it must concurrently obtain a reporting number and as of that date must fully assume the obligations of a Member.

Rule 26 – Policyholder Rights and Responsibilities

A. Eligibility Requirements

1. Applicants Eligible for the 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 make incorrect or misleading statements in the prescribed application form, or does not fall within any of the prohibitions or exclusions shown in 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 fifteen (15) days, except that nonresidents who are members of the United States military forces shall be eligible with respect to motor vehicles registered in other states provided such military nonresidents 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 the standard private passenger Massachusetts Automobile Insurance Policy pursuant to the MAIP Private Passenger Automobile Insurance Manual.

3. Applicants Not Eligible for the MAIP

- a. No Member is required to offer or continue insurance to any applicant or insured in any of the following circumstances:
 - (1) If any person who usually drives the motor vehicle does not hold or is not eligible to obtain an operator's license or fails to obtain such license as required by law; or
 - (2) If the applicant or any person who usually drives the motor vehicle has failed to pay an insurance company any motor vehicle insurance premiums due or contracted during the preceding twelve (12) months; or

- (3) An applicant shall not be entitled to physical damage insurance as defined in Rule 27 nor shall any ARC or LADC be required to offer or continue to offer physical damage insurance if the applicant has failed to make the vehicle(s) available for inspection pursuant to 211 CMR 94.
- b. An applicant who is eligible for insurance shall not be placed in the MAIP in any of the following circumstances:
 - (1) If a person obtains insurance through a group marketing plan pursuant to G.L. c. 175, § 193R; or
 - (2) If the applicant is one of two or more entities, in each of which the same person or group of persons or corporations owns a majority interest, none of such entities shall be eligible for insurance under the MAIP if any of such entities has failed to meet its premium obligations as outlined above. If an entity owns the majority interest in another entity that in turn owns the majority interest in another entity, all entities so related shall be considered under the same majority ownership for purposes of this part.

B. Reassignment Rights

1. A Member shall provide coverage to each applicant assigned to it. However, subject to sections B.2. and B.3. of this Rule, an applicant or policyholder may subsequently request reassignment to another Member if the applicant or policyholder can establish any one of the following:
 - a. the applicant or policyholder has previously been involved as a plaintiff in litigation with the Member;
 - b. the applicant or policyholder is currently involved as a plaintiff in litigation with the Member;
 - c. the policyholder of a Member filed a Consumer Complaint with the Division of Insurance against such Member prior to the MAIP assignment;
 - d. the policyholder of a Member filed a Consumer Complaint with the Attorney General against such Member prior to the MAIP assignment; or
 - e. the applicant or policyholder has invoked his/her rights under a consumer protection statute regarding his/her relationship with the Member (i.e. applicant has previously issued a Chapter 93A Demand Letter) prior to the MAIP assignment.
2. To request reassignment, an applicant or policyholder must complete the Request for Reassignment Form found in the MAP and provide the necessary documentation

required by such Form no later than thirty (30) days following: (1) the date of the initial assignment to the MAIP, or (2) the annual policy renewal date.

3. Consistent with Rule 29.G.3, at no time may an applicant or a policyholder request reassignment to a different Member if any outstanding premium balance is due the Member. Furthermore, an applicant or a policyholder may not for any reason request reassignment to a specific Member under this subsection.

C. Clean-in-Three Risks

All Clean-in-Three Risks with renewal dates during the period April 1, 2008 through March 31, 2011, shall not be non-renewed by a Member, subject to the exceptions identified in Rule 21.C.

D. Re-Eligibility for the MAIP

Applicants eligible for assignment in accordance with Section A. are subject to the following re-eligibility requirements.

1. New Application

Any applicant denied insurance under Section A or cancelled under Section D of this Rule may reapply to the MAIP as soon as the cause of ineligibility is removed.

- a. Applicants cancelled for nonpayment of premium may reapply for assignment at any time provided no earned premium is owed the previous assigned company.
- b. If an applicant cancelled for nonpayment of premium reapplies, provided such applicant is otherwise eligible, the application shall be accompanied by the deposit prescribed in Rule 28.
- c. Such application shall be considered a new application and the applicant shall be assigned to a company in accordance with the provisions of Rule 29 or reassigned to the prior company, if applicable, in accordance with Rule 29.

2. Renewal Application

Any policyholder who fails to pay the renewal premium quoted by the assigned company in accordance with these Rules, may reapply for assignment at any time.

- a. If the applicant reapplies, provided the applicant is otherwise eligible, the application shall be accompanied by the deposit prescribed in Rule 28.

- b. Such application shall be considered a new application and the applicant shall be assigned to a company in accordance with the provisions of Rule 29.

E. Cancellations

If a policy is cancelled by the company at any time or by the insured within thirty (30) days of the effective date or the receipt of the policy, whichever is later, the return premium shall be computed pro rata. "Policy" in this instance includes the copy of the coverage selections page showing the final approved rates for that policy year.

Nothing in these Rules should be construed to change the statutory obligations of companies to their producers or policyholders with regard to policy non-renewal or cancellation.

1. Cancellation at the Request of the Policyholder

If the policy is cancelled at the request of the insured later than thirty (30) days from the effective date or later than thirty (30) days from the receipt of the policy, whichever is later, the return premium shall be calculated on a short rate basis except that in the following cases the return premium shall be computed pro rata:

- a. If the insured has disposed of the automobile, provided the insured takes out a new policy in the same company on another automobile to become effective within thirty days of the date of cancellation.
- b. If the insured automobile is repossessed under terms of a financing agreement.
- c. If an automobile is cancelled from a policy, the policy remaining in force on other automobiles, or if there remains in force in the name of the insured or his spouse, if a resident of the same household, and in the same company, a concurrent automobile policy covering another automobile.
- d. If the insured enters the military service of the United States of America.
- e. If the insured deletes or reduces any coverage and the policy remains in effect for other coverage.
- f. If the policyholder requests cancellation of a policy because coverage has been replaced in the voluntary market, and provides the assigned company written confirmation of the replacement coverage.
- g. Theft of Vehicle or Plates
 - (1) If the insured automobile is stolen or destroyed (total or constructive total loss) and cancellation is requested by the insured within thirty (30) days following

the date the automobile is stolen or destroyed, the return premium for all coverages (including the premium for the coverages under which loss was paid) shall be calculated on a pro rata basis from the day following the date of such loss.

- (2) If the insured registration plates are stolen or destroyed, a lost plate affidavit is to be issued to the Registry of Motor Vehicles canceling only coverage with respect to such plates effective the day following the date of such loss, and the policy shall continue to provide coverage with respect to any replacement plates.
 - (3) If the insured files a lost plate affidavit with the Registry of Motor Vehicles, the company may cancel the policy.
2. Except as otherwise provided by law, no cancellation of the policy, or any of its parts, whether by the company or by the insured, shall be valid unless written notice thereof is given by the party proposing cancellation to the other party at least twenty (20) days in each case prior to the intended effective date thereof. Notice of cancellation sent by the company to the insured and the loss payee at the addresses stated in the policy by regular mail for which a certificate of mailing receipt has been obtained from the United States Postal Service, shall be a sufficient notice and an affidavit of any officer, producer, or employee of the company, duly authorized for the purpose, that he has so sent such addressed as aforesaid, shall be prima facie evidence of the sending thereof as aforesaid. When the cancellation becomes effective, the company shall electronically transmit the pertinent data to the Registry of Motor Vehicles in the manner prescribed by the Uninsured Motorists System (UMS). The written notice to the insured shall specify the reason or reasons for cancellation if the cancellation affects Part 1 coverage. If the reason for cancellation is non-payment of premium, the Notice of Cancellation shall state the amount of deficiency of the premium owed to the company for all the insurance provided and shall state in substance that the cancellation will not be effective if the insured pays the full amount of such deficiency on or prior to the effective date of the cancellation. If a cancellation of the policy results in a return premium of less than \$5.00, no refund need be made except at the request of the insured, in which case the actual return premium shall be allowed.

No policy in effect prior to a rate level revision shall be endorsed or cancelled and rewritten to take advantage of such a revision or to avoid the application of such a revision.

3. Cancellation by the ARC or LADC

- a. An ARC or LADC that has issued a policy under the MAIP shall have the right to cancel the insurance for reasons permitted under Massachusetts law, and by giving notice as required in the policy.

- b. Each such cancellation shall be on a pro rata basis, subject to a minimum premium of \$25 per motor vehicle or policy whichever is greater, with the balance returned to the policyholder. A copy of each such cancellation notice shall be furnished to the producer of record. A statement of facts in support of each such cancellation, as is required for a statutory notice of cancellation, shall be furnished to the producer of record and to the policyholder twenty (20) days prior to the effective date of cancellation.

Cancellation shall be effective on the date specified and coverage shall cease on that date.

If the ARC or LADC issues a cancellation notice for nonpayment of premium to the policyholder and the policyholder's remittance received by the ARC or LADC subsequent to the issuance of such cancellation notice is justifiably dishonored by the financial institution, the policy will terminate on the date and time shown on the cancellation notice issued for nonpayment of premium.

Nothing herein shall be deemed to affect the right of the ARC or LADC to cancel a policy for fraud, misrepresentation, or to invoke other remedies provided by law.

Rule 28 – Application Process

A. Submitting an Application to the MAIP

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

Assigned Risk Producers 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 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 policy is provided, the MAIP will assign a certification number to the application.

B. Assignment of Policy to Assigned Risk Company or Limited Assigned Distribution Company

An application with a certification number will be randomly assigned to an ARC based on 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 ARC to which the policy is assigned and the effective date of the coverage.

Once the policy has been assigned to an ARC, the ARP is responsible for providing the ARC with the following items within two (2) 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.

C. Premium Deposit and Payment Options

1. Amount of Deposit

A deposit of at least the amount noted below shall accompany the application for MAIP coverage. The deposit shall be in the form of a personal check, certified check, bank check, money order, premium finance company check or ARP's check made payable to the ARC or LADC. In the event that an ARP submits a dishonored check, issued either by the agency or by the ARP individually, on one or more occasions during a one-year period, future payments for the next twelve (12) months must be submitted by certified check, bank check, or money order.

- a. For a new business policy, a deposit of thirty percent (30%) is required; provided that for MAIP business with policy effective dates of April 1, 2008 through March 31, 2009 a deposit of not more than twenty-five percent (25%) is required.

- b. For a renewal policy, a deposit of twenty percent (20%) is required.

However, if the Eligible Risk has previously had a policy cancelled for non-payment, a premium deposit of one hundred percent (100%) will be required in addition to the outstanding balance of any earned premium, consistent with Massachusetts law. The Eligible Risk must complete a new application and the ARP must verify that the Eligible Risk has no earned premium outstanding within the last twelve (12) months.

Upon receipt of the deposit accompanying an application for insurance, the ARC or LADC may deduct from such deposit any unpaid balance or earned premium owed to that ARC or LADC. If any outstanding balance is not paid within the time permitted by the MAIP, the ARC or LADC shall be entitled to cancel the insurance.

All deposit, installment and additional premium payments shall be submitted gross of any commissions. Commission to the ARP will be paid in accordance with Rule 37 – Commissions.

2. Installment Plan

For MAIP business with policy effective dates of April 1, 2008 through March 31, 2009, each ARC or LADC shall utilize an Installment Payment Plan that has been filed with and approved by the Commissioner, with the following limitations: 1) MAIP insureds must be offered the same flat fee per installment finance charge plans that the ARC or LADC uses in the voluntary market, but the fee may not exceed \$6.00 per installment; 2) no fees based on an annual percentage rate (“APR”) shall be charged, regardless of those available in the voluntary market; 3) no more than a twenty-five percent (25%) first or deposit payment based on the MAIP premium may be required on or before the policy effective date; and 4) no fewer than seven (7) monthly payments thereafter must be offered to MAIP insureds who choose to pay in installments. An ARC or LADC shall cooperate with its ARP to assure that policyholders are made aware of their option to utilize an Installment Payment Plan.

3. Dishonored Check Charge

An applicant or policyholder that issues a check that is dishonored by the financial institution to which the check is presented for payment will be charged a fee as provided in the plan filed by the ARC or LADC and approved by the Division of Insurance.

4. Late Fee or Cancellation Fee

A policyholder that fails to pay an installment premium by the applicable due date will be charged a late fee or cancellation fee as provided in the plan filed by the ARC or LADC and approved by the Division of Insurance.

5. Agency Acceptance of Payments

Acceptance of payment by the ARP shall be viewed as a payment to the ARC or LADC.

6. Premium Financed Policies

The standards pertaining to premium financing for policies issued through the MAIP must be consistent with state laws and regulations.

**Rule 30 – Assigned Risk Company and Limited Assignment
Distribution Company Requirements**

A. Appointments

1. All Members are required to be Assigned Risk Companies. A Member may delegate its ARC responsibilities for assigned risk business if the Member executes an agreement with a LADC for handling its private passenger business quota share, in accordance with Rule 29 – Assignment Process. The agreement must be reviewed and approved by the MAIP.
2. LADCs must be approved by the Governing Committee and must meet and continuously maintain specified eligibility requirements. If at any time the LADC does not satisfy the specified requirements, the MAIP or the Commissioner may take appropriate action to terminate the LADC. The specified eligibility requirements that a LADC must meet are:
 - a. have a statutory capital and surplus of at least \$25,000,000;
 - b. have and maintain a net premium to surplus ratio that does not exceed 2 to 1;
 - c. have maintained an A.M. Best's financial rating of A- or better for a continuous three (3) year period from the most current publication date of the member's rating. A financial rating from an alternative rating service cannot be used to fulfill this eligibility requirement;
 - d. have been licensed to write motor vehicle liability insurance and physical damage insurance without restriction for a minimum of five (5) years;
 - e. have a service facility affording policy issuance and all other policyholder services; and
 - f. have the ability to service insurance claims in every state, the District of Columbia; and Canada.
3. The Governing Committee has the option to consider a LADC application from a company that does not meet the above eligibility criteria with the prior written approval of the Commissioner.

The Governing Committee shall appoint ARCs and LADCs in accordance with the eligibility requirements specified in accordance with the Plan and these Rules. For purposes of determining eligibility, groups of companies under the same ownership and management will be treated as a single Member.

4. In order to assure the protection of the public interest, the Governing Committee, in considering the appointment of an insurer as an ARC or LADC, shall require that the insurer, pursuant to a written agreement reviewed and approved by the Governing Committee or its designee, has the ability to and will effectively meet the following requirements:
- a. Provide policy issuance and premium collection services for all eligible classes of risks, except for those classes of risks specifically exempted by the Commissioner upon the request of the applicant;
 - b. Service insurance claims in every state, the District of Columbia and Canada;
 - c. Administer a Direct Bill Program;
 - d. Provide the Installment Payment Plan as described in Rule 28 – Application Process. An ARC or LADC shall cooperate with ARPs to assure that policyholders are made aware of their option to utilize an Installment Payment Plan;
 - 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. The policy forms, endorsements, new business application and renewal questionnaire shall be those filed by the Automobile Insurers Bureau and approved for use by the Commissioner for private passenger motor vehicle insurance.

B. Responsibilities

Nothing in this Rule shall be construed to affect the rights of any ARC or LADC to enter into any contractual agreement for the purpose of servicing the ARC's voluntary business. Nothing in this Rule shall be construed so as to relieve any Member of its quota share, its share of the administrative expenses of the MAIP, or of its responsibility to provide coverages as required by G.L. c.175, §113H(A). An ARC or LADC is required to perform the following responsibilities:

1. ARCs and LADCs 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 used for non-ARC or non-LADC motor vehicle business. ARCs and LADCs shall provide the same level and type of service to policies issued through the MAIP, as they provide to policies issued voluntarily.
2. No group or members of a group under the same management or ownership or both may provide different levels of service through a member of the group that is not an ARC or LADC than is provided to policyholders insured by an ARC or LADC member of the group.

3. General Duties

ARCs and LADCs shall perform the following general duties:

- a. Confirm operator driving licenses and records in order to effectively administer the Safe Driver Insurance Plan;
- b. Verify eligibility criteria;
- c. Verify that representations contained in the application for insurance are accurate as to classification, garaging, discounts, credits, vehicle use and vehicle description;
- 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 or LADC, 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 or LADC'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 or LADC on all ARPs; and

i. Monitoring of Assigned Risk Producers

ARCs and LADCs 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 or LADC in accordance with the provisions of the MAIP Rules of Operation;
- (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 or LADC on a timely basis in accordance with the MAIP Rules of Operation;
- (5) Failure to notify the ARC or LADC 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 or LADC 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.

4. Reporting Requirements

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

5. Continuation of Eligibility as an ARC

An ARC must maintain a viable book of voluntarily written motor vehicle 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

The producer of record must be mailed notification of such offer on a prescribed form ninety (90) days prior to expiration, which shall contain the provisional 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.

d. Member Obligations

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

A Member may choose, during the period from April 1, 2008 through March 31, 2011, to offer voluntary coverage to a policyholder it has insured through the MAIP. Once the Member mails the offer to write voluntary coverage and the policyholder accepts the offer, during that period the policyholder's producer of record shall continue to represent the policyholder who has been written or renewed in the voluntary market and to service the policy unless: 1) the producer is decertified or suspended by the MAIP or the Commissioner of Insurance pursuant to Rule 31.B; 2) the insured chooses to terminate such producer as its producer of record; or 3) the producer of record is precluded from dealing with other companies by an exclusive agency contract. During the period from April 1, 2008 through March 31, 2011, a Member who subsequently writes a policy written through the MAIP on a voluntary basis shall pay a commission in accordance with its commission structure for business written in the voluntary market to the policyholder's producer of record, regardless of whether there is a contract between the Member and the producer of record. No commission payments shall be made to the producer of record if that producer is decertified or suspended under Rule 31.B, is terminated by the policyholder as its producer of record, or is precluded from dealing with other companies by an exclusive agency contract.

On and after April 1, 2011, once the offer to write voluntary coverage is mailed, the Member shall have no further obligation to the producer of record unless there is a contract between the licensed producer and the Member. However, the Member shall have the option of servicing the policy through the producer of record.

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 Member and it shall not make an offer to the policyholder.

2. Voluntary Writing of Present MAIP Insured by Member Other Than Assigned Company

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 such kinds and amounts of coverage are refused by the insured.

3. Right of Insured to Reapply to Plan

Nothing in the provisions of this Section shall render the policyholder ineligible for coverage in the MAIP for the full term of the three (3) year assignment period. Subject to the right to reassignment pursuant to Rule 26.A.2., the policyholder may, at his or her option, continue the policy with the assigned company as a MAIP risk if the three (3) year assignment period has not yet expired.

D. Failure to Comply with the Provisions of this Section

If the Governing Committee finds that any Member without good cause is not complying with the provisions of this section it shall notify the Commissioner in writing.

E. Reporting Credits

Refer to the Manual of Administrative Procedures for the procedure outlining company reporting of all credits.