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RALPH A. IANACO
PRESIDENT

May 7, 2008

BULLETIN NO. 872

**DECISION AND ORDER ON AMENDMENTS TO
RULES 21 THROUGH 24 AND 26 THROUGH 38 OF THE
MASSACHUSETTS AUTOMOBILE INSURANCE PLAN**

The Commissioner of Insurance, on February 6, 2008, promulgated amendments to Rules 21 through 24 and Rules 26 through 38. The Emergency Rules were the subject of a hearing held on April 10, 2008 at the Division of Insurance.

The Division of Insurance has approved these rules promulgated on an emergency basis, as further amended, consistent with this Decision on May 6, 2008.

Please notify all interested parties of the amended rules. The Commissioner's Decision and Order is attached to this Bulletin.

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

Attachments



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Amendments to
Rules 21 through 24 and 26 through 38 of the
Massachusetts Automobile Insurance Plan
Docket No. C2008-01

Decision and Order on Amendments

I. Introduction

On February 6, 2008, I promulgated amendments to the Massachusetts Automobile Insurance Plan ("MAIP") Rules 21 through 24 and Rules 26 through 38 on an emergency basis (the "Emergency Rules") pursuant to Article X of the Commonwealth Automobile Reinsurers ("CAR") Plan of Operation. Amendments to the Emergency Rules were necessary in view of the imminent introduction of competitive rating and the implementation of an assigned risk plan in the residual market for private passenger motor vehicle insurance on April 1, 2008. I determined that the Emergency Rules were necessary to ensure the fair and equitable operation of CAR during the transition to the assigned risk plan. I further determined that the observance of normal requirements for promulgation of the amended Rules would delay their implementation and be contrary to the public interest.

We held a hearing on April 10, 2008, to afford all interested parties the opportunity to provide oral and written comment on the Emergency Rules and any recommendations for modification or amendments. Eight individuals spoke at the well-

attended hearing, and a number of others submitted written statements. The record remained open until April 18 and additional written statements were submitted.

II. The Rules

Rule 21

Rule 21 establishes the timetable for gradually implementing the MAIP, identifying the only types of risks that can be placed in the MAIP during the transition year, April 1, 2008 to March 31, 2009. A number of speakers at the hearing expressed concerns about the application of this rule.¹ One focus of their concern is whether the Rule creates a gap in guaranteed access to private passenger motor vehicle insurance during the transition year, which would prevent some individuals from obtaining such insurance if they are declined voluntary coverage. Their concerns are unwarranted. Every driver who cannot obtain insurance on a voluntary basis during the transition year is guaranteed insurance either through an exclusive representative producer (“ERP”) or through the MAIP.²

The voluntary market has not required companies to “take-all-comers” for decades. *Commerce Insurance Company v. Commissioner of Insurance*, 447 Mass. 478 (2006).³ Guaranteed access of all Massachusetts drivers to insurance has been accomplished through the agency of ERPs before the introduction of the MAIP. Rule 21 does not end this promise of guaranteed insurance, but does establish two mutually-exclusive routes by which a risk can obtain the guaranteed insurance during the transition year.⁴ Some residual market risks will obtain insurance through the MAIP while others will obtain it through ERPs, as in the past. No one, except in the limited circumstances

¹ No substantive changes have been made to Rule 21 since its effective date of July 16, 2007. Indeed this rule, and its impact, has been the subject of several previous public hearings. At no time prior to this hearing were these concerns raised.

² Exceptions to this rule exist. A person is not guaranteed automobile insurance if, for example, he has failed to pay any of the premiums due to his insurance carrier for the past twelve months, or if he does not hold, or is not eligible to hold, a driver’s license. M.G.L. 175, §§ 113H(A)(1) and 113H(A)(2).

³ In 1983, the Massachusetts legislature repealed the “take-all-comers” law by enacting Chapter 241 of the Acts of 1983, thereby ceasing to require an insurance company to write insurance voluntarily for every person who sought it.

⁴ The MAIP does not completely supersede the ERP-based system until April 1, 2009.

allowed by law,⁵ will be unable to obtain private passenger motor vehicle insurance during the transition year.

We provide this guide of the options that companies have during the transition year to dispel any lingering confusion about the practical application of the Rule 21 provisions.

Rule 21 does not change a company's options or obligations regarding risks who are not eligible for placement in the MAIP during the transition year ("MAIP-ineligible risk"). Through March 31, 2009, a company considering a MAIP-ineligible risk from a producer who is not an ERP may either write the risk voluntarily, elect to write the risk and cede it to CAR, or decline to write it. If the MAIP-ineligible risk obtains insurance through an ERP, however, the company must write the risk and may choose to retain it voluntarily or cede it to CAR.⁶ These options and obligations represent no change to the way business is handled under the current CAR rules. No MAIP-ineligible consumer will be unable to obtain insurance during the transition year, but he or she may have to obtain that insurance through an ERP, if no company writes the insurance voluntarily. During the transition year, drivers not eligible for placement through the MAIP are guaranteed insurance through an ERP.

Rule 21 creates different options for ERP servicing carriers and other companies regarding risks who are eligible for placement in the MAIP during the transition year ("MAIP-eligible risk"). A MAIP-eligible risk is not entitled to guaranteed acceptance by his or her ERP's servicing carrier. An ERP's servicing carrier either may write a MAIP-eligible risk voluntarily or decline to write it; these are the same options any company has with its voluntary producers.⁷ If an ERP's servicing carrier declines to voluntarily insure or renew a risk who is MAIP-eligible, the ERP will need to assist the MAIP-eligible driver to obtain insurance through the MAIP, if no company can be found that will write

⁵ See note 2 *supra*.

⁶ Under Rule 21.B, a company during the transition year can cede to the CAR pool only those risks who are not eligible for placement in the MAIP.

⁷ Under Rule 21.B, a company during the transition year cannot cede to the CAR pool those risks who are eligible for placement in the MAIP.

the risk voluntarily. A voluntary agent will have the same obligation. During the transition year, MAIP-eligible drivers are guaranteed insurance through the MAIP.

Rule 21 requires that a company must renew “Clean-in-Three” risks with renewal dates during the period April 1, 2008 through March 31, 2011. This requirement exists whether the risk is written through an ERP or a voluntary producer. Even if a “Clean-in-Three” risk is written through an ERP with whom the company will cease to have a direct relationship as of April 1, 2009, a company may not non-renew a “Clean-in-Three” risk except in one of the circumstances set out in Rule 21.C.1 through 3. After March 31, 2009, companies must renew “Clean-in-Three” risks but they may decline any new business that does not meet their underwriting standards. This requirement is intended to provide a structured transition for consumers, producers and companies to a new residual market in conjunction with companies’ abilities to set their own rates. Until companies, producers and consumers become familiar and comfortable with the new environment, the Clean-in-Three non-renewal requirement will help minimize unnecessary market disruption and facilitate a successful transition to the MAIP. On or after April 1, 2009, incentives to companies to minimize the number of Clean-in-Three risks that are unable to obtain voluntary coverage will be provided through the credit system created under Rule 29.H.

Rule 22

The definition of Newly Writing Company has been revised to be consistent with the amendment to Rule 30.A.

Rule 27

Rule 27 prescribes maximum coverage limits for risks written through the MAIP, and is virtually identical to CAR Rule 6. Assigned risk plans are required to offer, at a minimum, the coverages identified in M.G.L. c. 175, §113H (“§113H”), up to the prescribed coverage levels. The coverages include optional insurance that exceeds the statutory minimums for mandatory insurance. Rule 27 allows higher maximum limits of coverage than those required by §113H.

The Emergency Rules propose no substantive changes to Rule 27. One company, nonetheless, suggests amending the rule to set a standard for the excess coverage that a company must offer a MAIP insured. It contends that when carriers could cede business

to CAR, they were more amenable to writing residual market business at the higher coverage limits in the CAR rules because, whatever the level of coverage, the insured losses would be pooled and shared by all the carriers. Under the MAIP, however, carriers have an incentive to offer only the minimum mandatory limits because the carrier is directly responsible for the full profit/loss of the particular assigned risk.

The company proposes to amend Rule 27 to state minimum limits that companies must offer to MAIP insureds. It observes that approximately 87 percent of the insured population carries a limit above the statutory minimum for property damage liability coverage, and suggests setting minimum limits at levels that would be high enough to meet the needs of most consumers but low enough to allow carriers to control the cost of their MAIP business.

Section 113H provides that the coverages and the limits of coverage offered by an assigned risk plan are available to insureds *at the option of the applicant*. Companies must offer MAIP applicants all options available under the MAIP, and permit them to choose what is appropriate for their needs. Failure to advise consumers of their options allowed under the law may expose a company to possible administrative action. Furthermore, proposals to change those limits of coverage in Rule 27 that exceed the §113H requirements should be addressed first at CAR, rather than through this forum.

Rule 29.E

Concern was raised regarding whether private passenger motor vehicle insurance business written under a group marketing plan pursuant to M.G.L. c. 175, § 193R is eligible for credits under Rule 29.E. In accordance with Rule 26.A.3.b(1), an applicant may not be placed in the MAIP if he/she obtains insurance pursuant to a group marketing plan; the company must provide the group member with a voluntary policy. Companies have observed that although voluntary policies written through a group marketing plan are counted in a Member's quota share, under the Emergency Rules, they are not explicitly eligible to receive voluntary credits. Accordingly, we have amended Rule 29.E.1 to make clear that a Member will receive voluntary credit for certain exposures that would be MAIP-eligible, but for the fact that they are written under a group marketing plan approved by the Commissioner in accordance with M.G.L. c. 175, § 193R.

Rule 29.F

Rule 29.F postpones implementation of the household procedure rule until April 1, 2009. Those opposed to the delay assert that it is easier for insureds to have a single carrier insure all household members, rather than to permit the MAIP to assign MAIP-eligible household members to different carriers as it receives their applications. We have been presented with no facts and no compelling policy reason for altering the date for implementing the household procedure rule, and decline to do so.

Rule 30.A

The Emergency Rules amended Rule 30.A to establish a time frame for determining when a new Member qualifies for an ARC appointment. The amendment requires appointment only after the Member begins reporting detailed statistical data pursuant to Part VII of the Commissioner's statistical plan.⁸ That part of the plan requires companies that exceed the reporting thresholds of \$100,000 in written premium or \$50,000 in paid losses for private passenger automobile insurance, as identified in the Annual Statement reconciliation process, to report detailed statistical data no later than the December shipment of the second following year. This link to the statistical plan potentially could result in a maximum period of three years during which a new entrant to our market would not have risks assigned to it from the MAIP.

Some insurers currently writing private passenger automobile insurance in our market object to any delay whatsoever in assigning risks to new entrants under the MAIP. Other speakers expressed concern only as to the linkage between the Emergency Rule and the statistical plan that creates the potential three year period before a new entrant could receive residual market assignments. We address these concerns separately.

1. Linkage of the Eligibility for Appointment as an ARC to the Commissioner's Statistical Plan.

Some speakers argue that the potential three-year delay generated by linking eligibility for an ARC appointment to the statistical plan is excessive and would be unique to our market. Their arguments persuade us to decouple this linkage and to adopt a

⁸ Under Rule 23, an insurer becomes an active member of CAR as soon as it writes a single private passenger motor vehicle policy. At that time it receives a reporting number and fully assumes the obligations of a CAR member. Assigned Risk Companies ("ARCs") are a subset of CAR Members who have been appointed by the Governing Committee to issue insurance policies to risks referred through the MAIP. For purposes of the MAIP, they are servicing carriers as defined in G.L. c. 175, §113H.

provision that requires a new entrant to accept MAIP assignments two years after its first private passenger motor vehicle insurance rate becomes effective for use in Massachusetts. This rule will establish a period of two years during which a new entrant will not receive an assignment from the MAIP, a result which aligns with our historical practice in Massachusetts and with residual markets throughout the United States that are structured as assigned risk plans, as discussed more fully below.

2. Maximum Two-Year Lag in MAIP Assignments for New Entrants.

Some of the insurers that currently write in our market object to any delayed assignments of MAIP risks for new entrants to our market. That delay, they argue, results in an unfair and inequitable distribution of the residual market risk.⁹ The companies' arguments for requiring new entrants in the market to accept MAIP assignments immediately do not present a balanced analysis of the multiple factors that are relevant to decisions to enter the Massachusetts market and demonstrate a less than candid recitation of the history of, and reasons for, delay in requiring a company to become an ARC.

The companies are concerned that new entrants will be able to charge lower rates than companies currently writing in the market because the new entrant's rates need not include a residual market load. Good business, these companies argue, will migrate to the new entrants, forcing insurers who must insure assigned risks to raise their voluntary rates to mitigate the inadequate residual market rates that they must offer. The companies fail to consider that a new entrant's rates may be equal to, or greater, than their own rates. They fear that a new entrant might come in intending to write only during the period when it is not burdened with residual market business; thereby allowing it to undercut its competitors. This simplistic reasoning is, at best, naive.

The substantial start-up costs, including marketing and infrastructure expenses, that are involved in establishing a business, particularly in a newly competitive and somewhat idiosyncratic market, make it highly unlikely that any new entrant will not have a long-term commitment to our market. Indeed, a prudent insurer's rate structure will

⁹ Comments at the hearing that technology allows for timely reporting imply that a major issue that must be considered is the availability of computer-based information systems. Those systems have now been in place for many years and no longer present either a significant barrier to or enhanced capacity for data reporting. They have no immediate relevance to the issue of deciding when a new entrant is eligible for appointment as an ARC.

anticipate the imminent burden of assignments; if it fails to, the company will be faced with the unsavory prospect of requiring rate increases after only two years in the market.

The companies overlook, as well, that competition must be conducted fairly. Insurance rates must not be inadequate under G.L. c. 175E, §9. This statute specifically prohibits insurers, or rating organizations, from filing in bad faith rates that it knows or should know are grossly inadequate for the insurance provided, and which are filed and used to compete unfairly for motor vehicle insurance business. An insurer which files such rates faces the possibility that its rates will be increased to an adequate level. We will not hesitate to invoke this remedy in this market if necessary.

Companies that oppose any delay in eligibility for MAIP assignments conveniently fail to acknowledge that, historically, companies have not been required to become servicing carriers for the residual market when they first start to write private passenger business in Massachusetts. CAR Rule 13 required a company that wrote 5,000 exposures in a particular policy year to become a servicing carrier thereafter, but not until the second year after it met that threshold.¹⁰ Utilizing a full policy year of data to establish an accurate basis for determining eligibility to become a servicing carrier is consistent with past practice in our market. The uncertain effects of competition on consumer choice and, consequently, on market share support retention of a foundation that has functioned well. During its second year in the market, a company will solidify its market share and develop data adequate to support its rate filings. A two-year time period before a company receives assignments from the residual market conforms to established practice, and will ensure that MAIP assignment quota shares are calculated on data that fairly represents the company's position in the market.

Following the hearing, the Property Casualty Insurers Association of America ("PCI") submitted a spreadsheet showing that almost all of the 40 auto insurance residual market plans surveyed have a two-year lag between entry into the market and assignment of residual market risks. PCI observed that the two-year lag reflects the constraints of countrywide statistical reporting. The two year time frame under the amended Rule is consistent with nationwide practice.

¹⁰ CAR notified the company of its eligibility status in the year after it wrote 5,000 exposures, but did not require it to become a servicing carrier until January 1 of the next policy year.

Significantly, once a company is appointed an ARC, it will receive a MAIP quota share that is based on its written voluntary market exposures during the most recent twelve months of business. Quota shares are based on voluntary market shares which lag two years behind the current year in other states with assigned risk plans. In Massachusetts, once a new entrant is eligible to receive MAIP assignments, its quota share, like that of every other company writing private passenger automobile insurance, will be calculated on the same most recent twelve-month basis, updated monthly. That is, the MAIP brings a new entrant up to par with existing companies immediately.

The MAIP Rules further balance any benefit that might accrue from a delay in receiving MAIP assignments with an obligation to honor those assignments for three years, in the event that a company withdraws from the Massachusetts market.¹¹ MAIP assignments are made for a three year period; a company that withdraws from the market must continue to meet its MAIP obligations for that period. We have amended Rule 30.A accordingly and are concurrently amending the definition of Newly Writing Company in Rule 22.

Rule 30.C

Rule 30.C establishes procedures that a company must follow when it takes a risk out of the MAIP and writes it voluntarily. One such procedure requires the company to pay a commission to the producer of record for a MAIP policyholder after the company writes the policy voluntarily, even if it has no other relationship to the producer of record. This obligation ends on April 1, 2011.

Producers object to this provision and argue that it interferes with the producer-client relationship and threatens the lifeblood of an agency. They contend that ARCs should be required to pay commissions to producers of record in perpetuity, unless the policyholder decides not to do business with that producer of record.

A Decision issued on January 2, 2008 incorporated into Rule 30.C the limitation on the payment of commissions to a producer of record with whom a company has no contractual relationship, when that company elects to write a risk voluntarily that it formerly insured through the MAIP. The Emergency Rules did not change this provision,

¹¹ We clarified this requirement further in Rule 38.

and the producers have offered no new arguments in support of their position. The rule will remain unchanged.

Rule 31

Concerns were raised regarding the Rule 31 requirement that all licensed insurance producers be certified Assigned Risk Producers (ARPs). Specifically, insurance companies that act as direct writers, or that use what are known as captive or exclusive producers (“captive producers”) to sell and service their private passenger motor vehicle insurance policies, stated that it is unduly burdensome and financially inefficient to require all of their employee or captive producers to become certified as ARPs. These companies suggest, as an alternative, that they be permitted to designate particular employee or captive producers to be certified ARPs to write and service MAIP business on behalf of the company. These specially designated producers, they argue, would be appropriately trained to provide quality service to the company’s MAIP consumers.

It is important, and indeed required, that consumers work with properly trained and certified insurance producers when purchasing private passenger motor vehicle insurance through the MAIP. As set forth in Rules 26 and 29, MAIP risks are assigned to an ARC by application. The practical effect of this process is that, regardless of the identity of the insurer that will write and service the MAIP risk after it is assigned, the producer with whom the consumer interacts to complete the MAIP application must be proficient in the MAIP application and assignment process. It is critical, therefore, that *all* property and casualty producers, whether they are an employee producer of a direct writer, a captive producer or an independent producer, are trained and certified as ARPs in accordance with Rule 31. As such, we decline to amend Rule 31 to permit ARCs that are direct writers, or ARCs that use captive producers, to designate only certain producers to be certified ARPs to write and service MAIP business on behalf of the ARC.

Substitution of the term “licensed producer” for the term “ARP” in the first paragraph of Emergency Rule 31 also raised concerns that it is overly broad. We agree with this assessment, and have amended Rule 31 accordingly.

Rule 36

Rule 36 was introduced to the MAIP Rules on an emergency basis. Emergency Rule 36 authorizes a Member (“assignor Member”) to contract with an Assigned Risk

Company (“ARC”) to handle all the assignor Member’s current and future MAIP assignments. The contract, called a Limited Assignment Distribution Agreement (“LADA”), obligates the ARC to assume liability for the assignor Member’s entire MAIP assignments. Rule 36 identifies some of the specific terms of the LADA.¹² The fourth term, which requires the ARC to offer the same premiums and services to its voluntary insureds, its MAIP assignments based on its voluntary Market share and those it receives pursuant to LADAs, has engendered considerable controversy. The concern arises from the possibility that the assignor Member’s rates may be lower than the ARC’s. This triggers the belief among some that Emergency Rule 36 is not “fair” to consumers because an ARC, purportedly, should issue a policy at what is presumed to be the assignor Member’s lower rate. Opponents of this Emergency Rule appear to view this as a widespread problem and fear that it will encourage companies to enter into LADAs with the aim of requiring MAIP insureds to pay higher premiums. These concerns are vastly overstated and unsubstantiated.

The underlying assumption, that the ARC’s voluntary premium almost always will be higher than that of the assignor Member’s that has entered into a LADA, is not necessarily true. Indeed, the current rates of some companies that have traditionally contracted with other carriers to handle residual market business are higher than those of carriers that have expressed interest in servicing that business for those assignor Members. This criticism, furthermore, ignores the dynamic nature of managed competition; the relative rates that insurers charge can change at any time.

The carefully crafted provisions of Emergency Rule 36 will protect consumers from inordinately high rates by ARCs. The ARC must have a voluntary premium structure that will sustain the minimum 1% market share that it must write directly, as required by Rule 36.B.1, in order to assume §113H servicing carrier responsibilities under

¹² The LADA must provide that: 1) the ARC is responsible for servicing as §113H servicing carrier all of the assigning Member’s MAIP quota share in addition to servicing MAIP assignments based on its own quota share; 2) the ARC is solely responsible for ensuring that its practices comply with all MAIP Rules, state laws and regulations with respect to all business serviced, including business serviced under LADAs; 3) the ARC assumes all of the assigning Member’s legal servicing carrier liabilities with respect to all of the Member’s MAIP quota share; and 4) the ARC offers the same premiums and provides the same level of service to all MAIP assignments for which it acts as §113H servicing carrier.

a LADA.¹³ If an ARC is part of an insurance group, furthermore, it must use the same rates that its other group members use in the voluntary market. The ARC, as a practical matter, will not be able to have an inordinately high rate; the ARC must have a real, *i.e.*, competitive, rate. Rule 36.C also protects consumers from a potential monopoly at the hands of an ARC; there is a limitation on how much business an ARC can write and continue to accept from other Members under LADAs.

The critics of Emergency Rule 36.A.4 also overlook the provision in Emergency Rule 36.B that limits the premium that a §113H servicing carrier can charge an assigned risk. A §113H servicing carrier must charge either its own voluntary premium or the premium for that risk calculated using the MAIP rates on file with the Commissioner, *whichever is lower*. Ultimately, the highest premium that can apply to a MAIP risk that is written under a LADA is the premium under the MAIP rates approved for CAR. Those rates must meet the same statutory standards as rates filed by any carrier. Accordingly, the contention that Rule 36 will permit unrestrained premium gouging of MAIP assignees written under LADAs is unfounded.

Emergency Rule 36, as drafted, exactly follows the statutory requirements for residual market premiums set out in the Lane-Bolling Amendment. The precise language of that amendment, as currently appearing in G.L. c. 175, §113H, provides as follows (emphasis added):

“The premium charges filed by or on behalf of the plan shall provide that such premium charges for all vehicles rated in accordance with the Massachusetts Private Passenger Automobile Insurance Manual and all other nonfleet private passenger vehicles shall not exceed *the premium charges which would be used by each risk's servicing carrier* for that risk if such risk were not insured in the plan.”

Rule 36 requires that the MAIP risk written under a LADA will be charged the voluntary premium of his or her §113H servicing carrier¹⁴ or the premium calculated using the

¹³ We have not allowed companies to enter our market without the Commissioner's explicit permission with the sole intention of servicing the residual market. Our rules require that a company that wishes to provide services in the residual market also must have a real presence in our voluntary market, either independently or through the insurance group of which it is a member.

¹⁴ See the definitions of ARC and LADA in Rule 22.

MAIP rates on file with the Commissioner for a similar risk. Lane-Bolling guarantees a premium no greater than the premium charged by a §113H servicing carrier, but not assignment to a particular §113H servicing carrier. It does not entitle a residual market risk to any particular company's premium structure.

Concerns that focus on the rates to be charged policyholders written under LADAs fail to recognize the benefits and the realities of such arrangements. LADAs are not new with the advent of the MAIP; for many years some carriers have contracted with other insurers to service residual market business written through ERPs. Because the residual market for private passenger motor vehicle insurance in large part comprises new and inexperienced drivers and those with bad driving records, sound administrative practices support the desirability of addressing their particular needs by maximizing the support and resources available to them. An insurance company that has only a small MAIP quota share is not likely to have the dedicated personnel and resources appropriate for monitoring its few assigned risks. In contrast, an ARC with specialized experience and possible economies of scale, will be able to provide more adequate support for assigned risks. LADAs therefore promote greater efficiency and better oversight of the residual market.¹⁵

Some speakers have complained that small companies that enter into LADAs to service their MAIP quotas shares will have a competitive advantage relative to the larger insurers, who are not permitted to enter into LADAs. This criticism fails to consider that an assignor company will have to pay the ARC to service its quota share. This cost to the assignor Member will represent its share of the economic burden of the Massachusetts residual market and will be reflected in the assignor Member's rate structure. Only if an ARC inadequately prices the cost of its acceptance of responsibility for all of an assignor Member's MAIP quota share will the assignor Member escape its fair share of the residual market burden. We anticipate that this will rarely happen with ARCs that are experienced with residual market drivers; we expect that ARCs will not undervalue their services.

¹⁵ An assignor Member may have a greater market share than the direct market share of the ARC with which it contracts. Members with market shares in excess of 5% are prohibited from entering into LADAs without the Commissioner's permission; ARCs are required to have only a 1% direct market share. This possibility does not undercut the fact that ARCs in general have greater, more focused experience with residual market drivers.

Emergency Rule 36.A.4, by requiring equal treatment of all risks serviced by an ARC, both those based on its quota share and those written under LADAs, addresses the most important fairness issue for consumers. It requires equal treatment of all risks serviced by an ARC, who all receive policies written on that specific ARC's paper. The critics of Rule 36 overlook the inherent fairness of requiring that all risks that an ARC insures be subject to the same rate structure. An ARC cannot discriminate among the MAIP assignments for which it acts as a §113H servicing carrier. Rule 36 avoids the possibility that an ARC could charge different premiums to insureds with the same rating characteristics in the same rating territory. Adoption of the approach suggested by the critics of Rule 36 would secure a premium windfall for some drivers based on the accident of MAIP assignment.

"Fairness" in the context of a residual market that is based on the (intentionally) random nature of assignment of risks to insurers appropriately is focused on ensuring that each servicing carrier affords equal treatment to all its insureds. "Fairness," like beauty, is in the eye of the beholder. The accident of random assignment does not give rise to an "entitlement" to a particular company's rate that is worthy of being recognized in the context of the MAIP. To those drivers with bad driving records who enjoy a premium windfall, we note their good fortune, but we decline to undertake to increase their numbers.

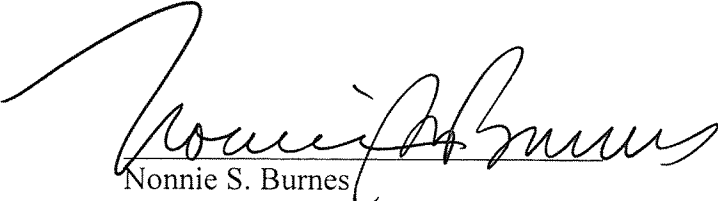
Rule 38

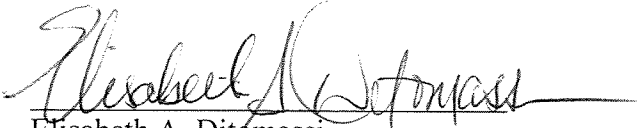
Rule 38 has been amended to clarify the obligations of a company that is terminated as an ARC.

III. Conclusion

We approve the MAIP rules promulgated on an emergency basis, as further amended consistent with this Decision. The amended rules are set out in Appendix A to this Decision.

Dated: May 6, 2008


Nonnie S. Burnes
Commissioner of Insurance


Elisabeth A. DiTomassi
Deputy Commissioner

A. General Provisions

The Massachusetts Automobile Insurance Plan (the “MAIP”) has been created to provide private passenger motor vehicle insurance to eligible risks, as defined by Rule 22, who seek and are unable to obtain such insurance through the voluntary market, and to assure that the risks written through the MAIP are distributed equitably based upon the Quota Share of each Member, both as defined by Rule 22.

The Rules of Operation of the MAIP are adopted in accordance with the CAR Plan of Operation in order to implement the MAIP and shall be effective July 16, 2007, subject to the Provisions for the Phase-In of Placements in the MAIP set out in Rule 21.B below and the constraints identified in Rule 21.C below.

B. Provisions for the Phase-In of Placements in the MAIP

In order to achieve a smooth transition from the reinsurance facility administered by Commonwealth Automobile Reinsurers (“the CAR pool”) to the MAIP, the placement of eligible risks in the MAIP will not begin until April 1, 2008 (see Rule 21.B.2 below) and will, at first, be limited to new business. The placement of all other business in the MAIP will be subject to a gradual process. The first, limited category of risks that must be placed in the MAIP if declined in the voluntary market will also begin for policies effective on or after April 1, 2008 (see Rule 21.B.2 and Rule 21.B.3 below). Only as of April 1, 2009 must all risks that are declined in the voluntary market be placed in MAIP (see Rule 21.B.4 below). Additionally, constraints on business that cannot be non-renewed are imposed for a three-year transition period (see Rule 21.C below). This measured approach is necessary to ensure that the MAIP is not overwhelmed in its initial operation and to allow CAR time to implement the administrative framework of the MAIP. To achieve these benefits, the following rules apply to eligibility for ceding to the CAR pool and to eligibility for placement through the MAIP on or after July 16, 2007:

1. Beginning on July 16, 2007, the MAIP Rules become effective, but no business can be placed in the MAIP until April 1, 2008. Members who are eligible to cede under the CAR Rules may continue to cede to the CAR pool new or other private passenger motor vehicle insurance business, including renewal business, with policy effective dates from July 16, 2007 through March 31, 2008.
2. All new business, as defined by Rule 22, with policy effective dates on or after April 1, 2008, must either be written voluntarily or be declined and referred for placement through the MAIP. These declined risks can no longer be ceded to the CAR pool as of April 1, 2008.
3. All private passenger motor vehicle insurance business, including renewal business, with policy effective dates on or after April 1, 2008 that has 10 or more merit rating points, as determined by the MAIP rate manual rules, must either be written voluntarily or declined and referred for placement through the MAIP. These risks can no longer be ceded to the CAR pool as of April 1, 2008.
4. All private passenger motor vehicle insurance business with policy effective dates on or after April 1, 2009, must either be written voluntarily or be declined and referred for placement in the MAIP. These risks can no longer be ceded to the CAR pool as of April 1, 2009.

The last policy effective date on which any risk can be ceded to the CAR pool is March 31, 2009.

C. Constraints on Placement in the MAIP During the Transition Period

All Clean-in-Three risks, as defined in Rule 22, with renewal dates during the period April 1, 2008 through March 31, 2011, cannot be non-renewed by a Member unless:

1. The insured, at his own initiative, chooses not to renew his policy with such Member;

2. The producer terminates his relationship with a Member and the producer transfers his book of business, which includes such Clean-in-Three risk, from that Member to a new Member; or
3. The Member terminates his relationship with a producer and the producer transfers his book of business, which includes such Clean-in-Three risk, from that Member to a new Member.

D. Responsibility of CAR During the Transition Period

CAR is directed to submit to the Commissioner, by December 15, 2009, proposed rules that will ensure continued control of the size of the residual market after April 1, 2011. In developing such rules, CAR is to consider market-based strategies as well as other methodologies.

When used in the Rules, the following terms shall have the stated meanings:

ASSIGNED RISK COMPANY (ARC) means a Member that has been appointed pursuant to the Plan and Rules of Operation to issue private passenger motor vehicle insurance policies assigned through the MAIP and is a servicing carrier as this term is used in G.L. c. 175, § 113H.

ASSIGNED RISK POLICY means a private passenger motor vehicle insurance policy underwritten by an ARC pursuant to assignment through the MAIP.

ASSIGNED RISK PRODUCER (ARP) means any person licensed as a property and casualty insurance producer pursuant to G.L. c. 175, § 162H to § 162X inclusive, that has completed the MAIP requirements and has been certified by the Governing Committee or its designee to immediately submit private passenger motor vehicle insurance policies for placement through the MAIP with an ARC.

CAR means Commonwealth Automobile Reinsurers.

CAR (car) YEAR OF EXPOSURE means one car insured for twelve (12) months.

CLEAN-IN-THREE RISK means an Eligible Risk who is the named insured and any other person who usually operates the vehicle, who during the three (3) successive years prior to the policy effective date, meets all of the following requirements:

- (1) has been licensed to operate an automobile in Massachusetts at least thirty-six (36) successive months prior to the effective date of the policy;
- (2) has been continuously insured for the past thirty-six (36) months prior to the effective date of the policy, with no more than one period of lapsed coverage and where such period was not in excess of sixty (60) days;

(3) has not been found to be at fault for an accident that generated an insurance claim including a PIP claim, or a traffic violation as defined in 211 CMR 134.00 in the thirty-six (36) months immediately prior to the effective date of the policy; and

(4) In the previous sixty (60) successive months prior to the effective date of the policy has not had a DUI conviction or a conviction for a vehicular felony.

COMMISSIONER means the Commissioner of Insurance of Massachusetts.

ELIGIBLE RISK means any person who qualifies for a private passenger motor vehicle insurance policy under the provisions of G.L. c.175, § 113H excluding antique motor vehicles pursuant to G.L. c.175, § 113U.

GOVERNING COMMITTEE means the committee required by G.L. c. 175, § 113H(B).

HOUSEHOLD MEMBER means anyone living in a person's household at a single residence who is related to that person by blood, marriage, or adoption. This includes wards, stepchildren or foster children.

INACTIVE MEMBER means any insurer which is licensed to write private passenger motor vehicle insurance policies or bonds in Massachusetts, but which did not, in fact, issue any private passenger motor vehicle insurance policies or bonds in Massachusetts voluntarily during the most recent calendar year and which is not the issuing company on any outstanding Massachusetts private passenger motor vehicle insurance policies or bonds.

LIMITED ASSIGNMENT DISTRIBUTION AGREEMENT (LADA) means a contract between an ARC and another Member under which the Member transfers its obligation to provide private passenger motor vehicle insurance policies to risks assigned to it through the MAIP to the ARC and the ARC agrees to assume liability for and service all of the Member's MAIP assignments in exchange for a negotiated fee.

MAIP means the Massachusetts Automobile Insurance Plan. The MAIP is the mechanism by which eligible risks who are unable to obtain voluntary coverage are assigned to a Member for the purpose of obtaining private passenger motor vehicle insurance coverage, and by which such risks are distributed equitably based upon each Member's Quota Share.

MANUAL OF ADMINISTRATIVE PROCEDURES (MAP) means the CAR Manual of Administrative Procedures of the MAIP.

MEMBER means any insurer which is licensed to write private passenger motor vehicle insurance policies or bonds in Massachusetts and which does not qualify for inactive membership status. Groups of companies under the same ownership and/or management will be treated as a single Member.

MOTOR VEHICLE INSURANCE means direct insurance against injury or damage, including the legal liability arising out of the ownership, operation, maintenance or use of motor vehicles, including but not limited to bodily injury liability insurance, personal injury protection insurance, property damage liability insurance, physical damage insurance, medical payments insurance, uninsured/underinsured motorists insurance and towing and labor insurance.

NEW BUSINESS for the private passenger motor vehicle insurance market means: 1 a newly licensed driver applying for his or her own policy; or 2) a risk applying to a Member who has not been insured in the Commonwealth in the twelve (12) months preceding the application for coverage. This definition will expire upon the completion of the transition as contemplated in Rule 21 from a reinsurance facility to the MAIP.

NEWLY WRITING COMPANY means any Member which did not provide physical damage and/or liability coverage under a Private Passenger Motor Vehicle insurance policy in the Commonwealth of Massachusetts in the 12 consecutive calendar months preceding the calendar date on which the Member's initial Private Passenger Motor Vehicle insurance rates and rate manual became effective.

PERSON means every natural person, firm, partnership, association, corporation, government or agency.

PLAN OF OPERATION or PLAN means the CAR Plan of Operation.

PRIVATE PASSENGER MOTOR VEHICLE means those vehicles as defined in a Massachusetts private passenger automobile insurance manual on file with the Commissioner

QUOTA SHARE means the volume of business assignable through the MAIP to a Member that qualifies to be appointed as an ARC, as described in Rule 30.

RULES OF OPERATION or RULES or RULE means the CAR Rules of Operation of the MAIP or a Rule of the MAIP.

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 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 voluntarily issues a private 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.

A. Responsibilities of the Governing Committee

The Governing Committee of CAR shall have responsibility for the administration of the MAIP, including the preparation and filing of the Plan and Rules of Operation and the adoption and filing of any amendments to the Rules or Plan of Operation.

B. Members and Alternates

Any member of the Governing Committee may designate an alternate for any meeting of the Governing Committee by giving notice to the Commissioner and the MAIP of the name of such alternate prior to the meeting, subject to the approval of the Commissioner. In addition, all members of the Governing Committee shall designate, subject to the approval of the Commissioner, an alternate who may attend one meeting of the Governing Committee during each calendar year without prior approval of the Commissioner for the specific meeting.

C. Powers

The Governing Committee shall have the following powers:

1. To select at the annual meeting a Chairman and Vice-Chairman of the Committee in accordance with the following procedures:

The position of Chairman and Vice-Chairman shall be rotated annually between those chosen from insurance companies and those chosen from producers of insurance, except the Committee may elect an incumbent Chairman and/or an incumbent Vice-Chairman to a second one-year term or, if the incumbent has served for less than a full year, to one new term of one year, regardless of his (her) predecessor. At no time shall the Chairman and Vice-Chairman both be insurer members or producer members of the Committee. No person may serve more than two (2) consecutive terms as Chairman of the Committee. In the event the Chairman is unable to complete his (her) term, the Vice-Chairman shall become Chairman, at which time the Committee shall elect a new Vice-Chairman;

- 2.a. To appoint and remove the officers of the MAIP, subject to the approval of the Commissioner, and fix their salaries within the ranges established for the position. After an appointment has been approved, the Commissioner may instruct the Governing Committee to remove the officer for cause only. Salary ranges for officers shall be established by the Governing Committee, subject to the approval of the Commissioner, at a level that is consistent with the level of salaries in public sector organizations in Massachusetts;
- b. To appoint or employ others as is necessary to carry out the business of the MAIP;
3. To appoint, in consultation with the Commissioner, standing or temporary subcommittees for purposes of assuring that subcommittees fairly represent the Member Companies and producers, with due consideration given to the existence of expertise appropriate for the subcommittee in question. No individual may serve as Chairperson of more than two (2) standing subcommittees;
4. To prepare a Manual of Administrative Procedures which shall contain instructions for the statistical recording and reporting of MAIP business, auditing and claim review procedures, and other pertinent information;
5. To appoint or terminate ARCs as necessary;
6. To certify or revoke the certification of ARPs as necessary;
7. To manage the process by which risks are assigned to ARCs and to establish a process for requests for reassignment by policyholders by reason of placement in the MAIP, as is provided for by Rule 26.B, and to report quarterly to the Division the circumstances and outcomes of such requests for review;
8. To ensure that CAR complies with its obligations to applicants and policyholders in the MAIP;
9. To levy assessments on the Members as necessary for the operating expenses of the MAIP;

10. To assess penalties as provided for in the Rules of Operation or Manual of Administrative Procedures and to report to the Commissioner on a quarterly basis all producer and Member infractions;
11. To authorize contracts as necessary to provide space, equipment and services for the MAIP;
12. To distribute an annual report and minutes of the Annual Meeting of the Governing Committee and all other Governing Committee, subcommittee and advisory committee meetings to the Commissioner, to Members and to producer representatives serving on any committee;
13. To file manuals of classifications, rules, rates, rating plans and policy forms with the Commissioner, as may be permitted or required by law;
14. To initiate or defend legal actions in the name of the MAIP on behalf of the Members; and
15. To take any other action it deems necessary or appropriate for efficient and effective operation of the MAIP consistent with the purpose and intent of the MAIP.

D. Annual Meeting

The Governing Committee shall hold an Annual Meeting in conjunction with the Annual Meeting of the Members and shall report a summary of the previous fiscal year's activities at that time.

E. Additional Meetings

The Governing Committee shall hold additional meetings as necessary when called by the Chairman, by the Commissioner, or upon written petition of four (4) members of the Governing Committee. No meeting shall be held with less than ten (10) days' notice unless at least eight (8) members of the Committee waive the notice requirement, which waiver shall be entered in the minutes of the meeting.

F. Agendas for Meetings

Agendas for meetings shall be furnished to all members of the Governing Committee and to the Commissioner with the notice of such meeting. Only items specifically listed on the agenda will be considered unless two-thirds of the members of the Committee present vote for admission of each additional item.

G. Quorum

A quorum of the Governing Committee shall consist of eight (8) members, at least two (2) of which are insurer members and two (2) of which are producer members. No vote of the Governing Committee shall be taken unless a quorum is present.

H. Procedures

Before the Governing Committee takes final action on a matter that has a direct impact on the determination of any Member's Quota Share or any other significant financial impact, the final text of the motion to be considered will be provided to all members of the Governing Committee, at least twenty (20) calendar days prior to the scheduled Governing Committee action, unless ten (10) members of the Governing Committee vote to waive the twenty (20) day requirement. The text of the motion, sent to members of the Governing Committee, will be accompanied by an explanation. Any such action taken by the Governing Committee will not take effect for twenty (20) calendar days, unless ten (10) members of the Governing Committee vote that the action will be effective immediately. Any party aggrieved by the action may appeal to the Commissioner pursuant to Rule 40.B.

I. Proxy Voting Not Allowed

No member of the Governing Committee shall be permitted to vote by proxy.

J. Open Meetings

All Governing Committee, subcommittee (both standing and temporary) and advisory committee meetings shall be subject to the provisions of G.L. c.30A, § 11A½. Upon a two-thirds vote of the members of the Governing Committee present and voting, the Governing Committee may meet in executive session, as permitted by said § 11A½.

The officers of the MAIP shall include a President and such other officers as the Governing Committee may authorize. The position description of the above officers will be contained in the Personnel Manual under the jurisdiction of the Governing Committee. The Personnel Manual will also contain information regarding the term of office and salary ranges of the officers.

The President shall preside at all meetings of the MAIP membership and attend meetings of its committees of which he is a member ex officio, and perform such other duties as may be designated by the Governing Committee.

The President shall be responsible for all property of the MAIP, shall receive and carefully keep all monies of the MAIP, disburse the same only for the business of the MAIP and shall account to the Governing Committee for all such disbursements.

The President, or such other person as the Governing Committee may appoint, may sign and endorse in the name and on behalf of the MAIP in the transaction of its business, but not otherwise, checks, drafts, notes, and bills of exchange, subject to such countersignature as the Governing Committee may determine.

The President, or such other person as the Governing Committee may appoint, shall make such filings with the Commissioner on behalf of the MAIP as may be directed by the Governing Committee.

In the absence of the President, or the inability of the President to act, the Governing Committee shall designate another officer of the MAIP to act as President, with all the powers and duties conferred upon the President by the Plan and the Rules of Operation.

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 a standard private passenger motor vehicle insurance policy approved for use by the MAIP.

3. Applicants Not Eligible for the MAIP

- a. No ARC 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 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. An ARC 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 ARC;
 - b. the applicant or policyholder is currently involved as a plaintiff in litigation with the ARC;
 - c. the policyholder of an ARC filed a consumer complaint with the Division of Insurance against such ARC prior to the MAIP assignment;
 - d. the policyholder of an ARC filed a consumer complaint with the Attorney General against such ARC 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 ARC (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 through the MAIP, or (2) the annual policy renewal date.
 3. Consistent with Rule 29.F.3, at no time may an applicant or a policyholder request reassignment to a different Member if any outstanding premium balance is due the ARC. Furthermore, an applicant or a policyholder may not for any reason request reassignment to a specific Member under this subsection.
 4. If the reassignment of an applicant or a policyholder pursuant to Rule 26.B.1 results in an assignment to a Member that has executed a LADA with the ARC from which the applicant or the policyholder has requested reassignment, the MAIP shall apply the reassignment process until the applicant or the policyholder obtains insurances from another ARC.

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 E 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 Member in accordance with the provisions of Rule 29 or reassigned to the prior Member, if applicable, in accordance with Rule 29.

2. Renewal Application

Any policyholder who fails to pay the renewal premium quoted by the ARC 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 Member in accordance with the provisions of Rule 29.

E. Cancellations

If a policy is cancelled by the ARC 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 policy premium.

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 policyholder has disposed of the automobile, provided the policyholder obtains a new policy with 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 the 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 policyholder 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 ARC 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
 - a. An ARC 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 issues a cancellation notice for nonpayment of premium to the policyholder and the policyholder's remittance received by the ARC 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 to cancel a policy for fraud, misrepresentation, or to invoke other remedies provided by law.

Policies of an Eligible Risk as defined in Rule 22 – Definitions and written by an ARC may provide for coverage up to the following limits for private passenger motor vehicles.

1. Bodily Injury Liability: Total policy limits of \$500,000 each person, \$500,000 each accident;
2. Personal Injury Protection: \$8,000 per person, per accident;
3. Property Damage Liability: Total policy limits of \$250,000 each accident;
4. Medical Payments: \$25,000 each person;
5. Uninsured Motorists: \$500,000 each person, \$500,000 each accident for bodily injury;
6. Underinsured Motorists: \$500,000 each person, \$500,000 each accident for bodily injury;
7. Physical Damage Insurance, which shall mean: (a) collision coverage or limited collision coverage, (b) fire and theft coverage, or (c) comprehensive coverage, as those coverages are defined in the private passenger motor vehicle insurance policy approved for the MAIP. Assigned Risk Companies must charge the extra risk rate or, in the alternative, refuse to issue collision, fire, theft or comprehensive coverage under any of the following circumstances:
 - a. Comprehensive, fire and theft or collision coverage on a vehicle customarily operated by or owned by persons convicted within the most recent five (5) year period of any category of vehicular homicide, auto insurance related fraud or motor vehicle theft;
 - b. Comprehensive, fire and theft or collision coverage on a vehicle customarily driven by or owned by persons who have, within the most recent five (5) year period, made an intentional and material misrepresentation in making claim under such coverages;

- c. Collision coverage on a motor vehicle customarily driven by or owned by persons who have been involved in four (4) or more accidents in which such person has been deemed to be at fault in excess of fifty percent (50%) within the three (3) years immediately preceding the effective date of the policy;
 - d. Comprehensive or fire and theft coverages on a motor vehicle customarily driven by or owned by persons who have had two (2) or more total theft or fire claims within the three (3) years immediately preceding the effective date of the policy;
 - e. Comprehensive, fire and theft or collision coverage on a motor vehicle customarily driven, or owned by persons convicted one time within the most recent three (3) year period of any category of driving while under the influence of alcohol or drugs;
 - f. Comprehensive, fire and theft or collision coverage on any motor vehicle for which a salvage title has been issued by the Registrar of Motor Vehicles unless a new certificate of title has been issued pursuant to G.L. c. 90D § 20D; or
 - g. Comprehensive, fire and theft or collision coverage on a high-theft motor vehicle that does not have at least a minimum anti-theft or auto recovery device as prescribed by the Commissioner. The Commissioner may designate as a “high-theft vehicle” any motor vehicle, classified according to make, model and year of manufacturer, which has both above average incidence of theft and above-average original sales price, and may approve discounts for appropriate anti-theft or auto recovery devices for such motor vehicles.
8. An ARC may waive any deductible amount applicable to a payment under comprehensive coverage for glass damage and be reimbursed, when the policyholder has elected to repair rather than replace damaged glass as permitted by law and where satisfactory proof of the repair has been presented to the company.
9. Towing and Labor: \$100.00 per disablement; and
10. Substitute Transportation: \$100.00 per day, thirty (30) day maximum.

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 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 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 (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 Premium 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. 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 (12) twelve months must be submitted by certified check, bank check, or money order.

- a. For a new business policy, a deposit of 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%) of the premium quoted based on the MAIP rates 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 may deduct from such deposit any unpaid balance or earned premium owed to that ARC. If any outstanding balance is not paid within the time permitted by the MAIP, the ARC 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 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 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.

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 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 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.

6. Premium Financed Policies

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

A. Calculation of Initial Quota Share

For the purposes of calculating a Member's initial Quota Share, the Member's voluntary market share will be the ratio of each Member's written property damage liability exposures for the twelve month period ending June 30, 2007 with CAR ID codes 0 or 1 over the industry written exposures for the twelve month period ending June 30, 2007 with CAR ID 0 or 1. Exposures for motorcycles, snowmobiles, and electric cars will be adjusted by a factor of 0.33.

B. Assignment of Applications

The MAIP shall randomly assign applications that are eligible for coverage based on each Member's individual Quota Share. A Member's Quota Share shall reflect that Member's proportion of private passenger motor vehicle MAIP premiums that its respective voluntary private passenger property damage liability direct written exposures bears to the statewide total of voluntary private passenger property damage liability direct written exposures of all companies in the state.

1. For the purpose of such distribution as described above: (1) voluntary private passenger property damage liability direct written exposures; and (2) private passenger MAIP premiums shall be defined as below:
 - a. "Voluntary private passenger property damage liability direct written exposures" shall be the number of private passenger property damage liability car years written by the company for the most recent twelve (12) months, regardless of the type of motor vehicle insurance policy under which such property damage liability car years are written, excluding private passenger liability car years written through the MAIP. Exposures for motorcycles, snowmobiles, and electric cars will be adjusted by a factor of 0.33.

- b. “Private passenger motor vehicle MAIP premiums” shall be developed from the MAIP rates and rating plan and shall include the total of: 20/40 bodily injury (including guest), \$100,000 property damage liability, and \$8,000 personal injury protection manual premiums excluding subsidies calculated using MAIP cost-based rates and adjusted for the MAIP merit rating plan for private passenger motor vehicle MAIP insureds and any risk voluntarily insured that is eligible for premium credits allowed under this rule.
2. MAIP will assign applications to the most undersubscribed Member as defined by the ratio of the Member’s assigned MAIP premium to the Member’s credit-adjusted Quota Share. In the event this ratio is the same for two or more Members, MAIP will assign the application to the most undersubscribed of those Members based upon the difference between each Member’s assigned MAIP premium and its credit-adjusted Quota Share. All assignments are subject to the distribution restrictions relative to the assignment process identified in Rule 29.F. After assignment, MAIP will update the accumulated assigned MAIP premium and recalculate each Member’s ratio of assigned MAIP premium to credit-adjusted Quota Share.

C. Quota Share Adjustment

The MAIP shall adjust the assigned premium Quota Share of each Member monthly, in order to correct for the amount of previously assigned MAIP premium which was less than or in excess of each Member’s appropriate share of total MAIP premium, for the amount of premium connected with reversed assignments due to non-payment or insufficient funds, and for the amount of premium associated with MAIP risks moving to the voluntary market or adjustments for any applicable credits. On a monthly basis, the MAIP shall notify each Member of its market share and Quota Share (premium) adjustments.

Until April 1, 2009, the premium Quota Share of each Member shall be based on the voluntary exposure market share described in A, above. Thereafter, monthly adjustments will be made to each Member’s premium based Quota Share to reflect the latest rolling twelve (12) month voluntary exposure based market share.

D. Assignment Period

An Eligible Risk shall be insured by a designated ARC for a period of three (3) consecutive years. The designated ARC may offer to continue an Eligible Risk's assignment beyond the period of three (3) consecutive years by offering to write a third or subsequent renewal.

If an Eligible Risk that is unable to obtain insurance in the voluntary market at the end of the consecutive three (3) year period, or is unable to obtain an extension by the designated ARC may reapply for coverage through the MAIP. Such reapplication shall be considered a new application and the Eligible Risk shall be assigned to a different Member such that the designated ARC is different than the previous ARC.

In the case of nonresident military personnel, as described under Rule 26.A.1.c, the designated ARC need not renew if at the time of the renewal the policyholder is stationed in another state and his motor vehicle is not registered in Massachusetts.

E. Credit Programs

All credits for each rate year shall be reviewed annually and submitted to the Commissioner for his/her approval. Any premium credited under this Rule that in aggregate exceeds one-hundred percent (100%) of the overall quota share may not be credited against the quota share.

1. Voluntary Credit

- a. For policies with effective dates of April 1, 2008 through March 31, 2009, each Member shall receive a credit for any exposure that is eligible for MAIP placement pursuant to Rule 21.B.3., including those exposures meeting the MAIP eligibility criteria but written under a group marketing plan pursuant to M.G.L. c. 175, § 193R, that it insures voluntarily.

- b. For policies with effective dates on or after April 1, 2008, each Member shall receive a credit for any exposure that is eligible for MAIP placement for reasons other than those described in Rule 21.B.3., including those exposures meeting the MAIP eligibility criteria but written under a group marketing plan pursuant to M.G.L. c. 175, § 193R, that it insures voluntarily in the territory and operator classes pursuant to section E.2 below.
- c. Credit shall be applied to the Member's Quota Share in Rule 29.C for the appropriate premiums as defined under section E.2 below.

2. Amount of Credits

Members shall receive a credit for each exposure equal to the annual private passenger motor vehicle MAIP premium for the risk, as if it had been insured through the MAIP, if 10 or more points are attributable to the exposure based on the MAIP rate manual.

Members shall receive credit for each exposure written voluntarily pursuant to Rule E.1.b above in the territory and operator classes listed below. The amount of credit shall equal the annual private passenger motor vehicle MAIP premium for the risk as if it has been insured through the MAIP, multiplied by the factor shown below.

To the extent an exposure qualifies for credit on the basis of merit rating points and on the basis of operator class and territory, the final credit shall be the greater of the credit based on merit rating points or the credit based on operator class and territory.

Territory	Operator Class							
	10	15	17	18	20	21	25	26
1					1.0		1.0	
2					1.0		1.0	
3					1.0		1.0	
4					1.0		1.0	
5					1.0		1.0	
6					1.0		1.0	
7					1.0		1.0	
8					1.0		1.0	
9					1.0		1.0	
10					1.0		1.0	
11					1.0		1.0	
12					1.0		1.0	
13					1.0		1.0	
14					1.0	1.0	1.0	1.0
15	1.0	1.0	1.0		1.0	1.0	1.0	1.0
16	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
17					1.0		1.0	
18	1.0	1.0			1.0		1.0	
19	1.0	1.0	1.0		1.0		1.0	
20	1.0	1.0	1.0		1.0		1.0	
21	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
22	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
23			1.0		1.0		1.0	
24					1.0		1.0	
25					1.0	1.0	1.0	1.0
26			1.0		1.0	1.0	1.0	1.0
27					1.0		1.0	
40					1.0		1.0	
41					1.0	1.0	1.0	1.0
42	1.0	1.0	1.0		1.0	1.0	1.0	1.0
43	1.0	1.0	1.0		1.0	1.0	1.0	1.0
44	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
45	1.0	1.0	1.0		1.0	1.0	1.0	1.0

3. Take-Out Credit

Each Member shall receive a credit for each exposure previously insured through the MAIP that it writes voluntarily at the expiration of the MAIP policy.

To qualify for take-out credit, all of the following requirements must be met:

- a. The Member must provide proper notification prior to the expiration of the policy;
- b. The voluntary policy must be in effect for at least ninety (90) days;
- c. The kinds and amounts of coverage to be offered as a voluntary risk shall at least equal those in the policy being replaced;
- d. The Member shall be required to submit an approved monthly reporting form to the MAIP for all policies qualifying for credit during the month and to submit supporting data to the MAIP upon request; and
- e. The Member shall, if requested by the MAIP, agree to a physical audit of its records to substantiate the credits and exposures stated in the monthly report. The executed request for credit form must be submitted to the MAIP by the last day of the fourth month following the effective date of the policy.

The value of a take-out credit, for the purposed of the section, shall be determined by the MAIP no later than April 1, 2009.

F. Distribution Restrictions

Distribution shall be made on the basis that any applicant eligible for assignment under the MAIP Rules shall be assigned or reassigned to any Member with a Quota Share, subject to the following restrictions:

1. No risk shall be assigned to more than one Member.
2. Household Procedure

The household procedure will apply only to private passenger motor vehicle insurance policies with effective dates on or after April 1, 2009.

If a voluntary private passenger motor vehicle insurance policy is in force on a motor vehicle owned by a Household Member at the time an application to the MAIP is submitted, that application shall be assigned to the Member currently providing the voluntary insurance, provided that all of the following requirements are met:

- a. A copy of the coverage selections page for the policy providing private passenger motor vehicle insurance coverage for a vehicle owned by a Household Member is submitted with the application; and
- b. The limits and coverages requested are available from the assigned household company.

Any assignment to a Member under the provisions of the household procedure that is contrary to such provisions shall be returned to the MAIP promptly for reassignment in accordance with the household procedure.

3. Reassignment to Prior Member

In the case where an applicant or policyholder has been cancelled for nonpayment of premium, or has an outstanding premium balance due a Member and is otherwise eligible for placement in the MAIP pursuant to M.G.L. c. 175, Section 113H, the applicant or policyholder is ineligible for assignment to another Member, and will be assigned to that same Member such that the policy premium deposit will be applied first to the outstanding premium due, and any remaining deposit balance will be applied to the new policy.

G. Accruing, Buying, Selling or Transferring Credits

1. Members may accrue excess credits.
2. As of April 1, 2008, Members may sell, transfer, or buy excess credits to or from other Members in accordance with systems and procedures to be developed by CAR.
3. Members shall report to CAR within 30 days all transactions relating to the purchase, transfer or sale of excess credits.

H. Credits Relating to Clean-in-Three Risks

Not later than April 1, 2009, CAR shall develop a credit mechanism designed to encourage Members to voluntarily insure consumers who are Clean-in-Three Risks and who meet the following criteria:

1. The applicant or any person who usually drives the motor vehicle has not failed to pay an insurance company any private passenger motor vehicle insurance premiums due or contracted during the preceding twelve (12) months; and
2. Any person who usually drives the private passenger motor vehicle holds or is eligible to obtain an operator's license.

Such credit will be available to Members as of April 1, 2011, when the transitional constraint on non-renewal of Clean-in-Three risks as provided for in Rule 21.C has ended.

A. Appointments

The Governing Committee shall appoint ARCs 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.

A Newly Writing Company will be eligible for appointment as an ARC and be required to accept assignments through the MAIP on the 24-month anniversary of the calendar date on which the Newly Writing Company's initial Private Passenger Motor Vehicle insurance rates and rate manual became effective.

A Member may be excused from its private passenger motor vehicle servicing carrier responsibilities for the business assigned to it through the MAIP if the Member executes a Limited Assignment Distribution Agreement (LADA). Rule 36 details the eligibility requirements and procedures applicable to LADAs.

1. In order to assure the protection of the public interest, the Governing Committee, in considering the appointment of an ARC, shall require that the Member 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;
 - b. Service insurance claims in every state, the District of Columbia and Canada;
 - c. Administer a direct bill program;
 - d. Provide an installment payment plan as described in Rule 28 – Application Process. An ARC 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. 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.

2. An ARC shall bill the premium for a policy issued 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.
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;
- 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 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;
- (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.

4. 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.

5. 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 on a prescribed form 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.

d. ARC Obligations to the Producer of Record

An ARC 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 ARC 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 contract. During the period from April 1, 2008 through March 31, 2011, an ARC who subsequently writes a policy on a voluntary basis that it previously insured through the MAIP shall pay a commission in accordance with its commission structure for business written in the voluntary market at voluntary rates, regardless of whether there is a contract between the ARC 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 contract.

On and after April 1, 2011, the ARC shall have no further obligation to the producer of record unless there is a contract between the licensed producer and the ARC. However, the ARC shall have the option of servicing the policy through the producer of record.

2. Voluntary Writing of Present MAIP Insured by Member Other Than the ARC

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 ARC 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 the reporting of all credits.

A. Eligibility Requirements

In accordance with G.L. c. 175, §§ 113H, every Assigned Risk Producer (ARP) shall be assigned to each and every ARC for the sole purpose of obtaining private passenger motor vehicle insurance for applicants who have been unable to obtain such insurance through the method by which such insurance is voluntarily made available.

As of April 1, 2008, any licensed property and casualty producer in good standing shall be deemed to be certified as an ARP. Subject to the provisions of Rule 21.B, these producers shall submit business to the MAIP as an ARP provided that the producer maintains production criteria pursuant to Section C of this Rule.

On or after April 1, 2008, all licensed property and casualty producers must meet the following requirements and become certified as ARPs.

1. Have electronic access to the MAIP and the Registry of Motor Vehicles;
2. Have within the preceding twelve (12)-month period worked for a minimum of six (6) months with a producer licensed by the Division of Insurance, or with a Massachusetts motor vehicle insurer, during which time the applicant's efforts were primarily devoted to the Massachusetts motor vehicle insurance market; and
3. In satisfying the preceding criteria the applicant must conclusively show that he or she:
 - a. is applying in good faith;
 - b. will operate from an established location properly equipped to meet producer certification requirements;
 - c. will maintain regular business hours;

- d. has not been convicted of a crime related to his occupation as an insurance producer;
- e. has not had his or her 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 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, the production requirements as outlined in Section C of this Rule and the applicable regulations of the Division of Insurance;
- i. agrees to notify the MAIP of an agreement to sell the agency fifteen (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, including failure to meet minimum production criteria within the preceding twenty-four (24) months, 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 of this Rule. Failure to do so will be grounds for revocation of certification.

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 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 include photocopies of the licenses of each listed operator 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 twenty-four (24) months;
 - f. The ARP must certify, where so required by Rule 26.A.1.a, that the risk has made an attempt to obtain private passenger automobile insurance within fifteen (15) days of the application to the MAIP and has been turned down for such insurance;

- 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 or she 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 or she 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 (2) business days:
- a. The original application form, signed by the Eligible Risk and the ARP; and
 - b. The required deposit premium as specified in Rule 28.

6. The new business application, any additional coverage, and/or modifications in coverage must be submitted to the ARC within two (2) days of the effective date of coverage.
7. The ARP must remit payments on a timely basis. However, an ARC shall extend the payment period for an additional seven (7) days upon sufficient notice that all or part of a premium is being financed by a licensed premium finance company where the premium finance company has given its written assurance to pay the full premium financed to the ARC directly. This provision shall not obligate an ARC to provide such additional time if, notwithstanding any written assurances, the premium finance company has failed to perform its commitment previously.
8. The ARP must conduct all monetary transactions with the Eligible Risk and the ARC as required by the Rules of Operation.
9. The ARP must advise the premium finance company and/or the policyholder that checks for premiums for all financed accounts are to be made payable to the ARC.
10. The ARP must report all coverages bound and all registrations/titles certified to the ARC within two (2) business days after binding coverage or certifying a registration.
11. The ARP must forward to the Eligible Risk within thirty (30) days of receipt from the ARC, all policies and endorsements if not mailed directly by the ARC to the Eligible Risk.
12. The ARP must properly order endorsements.
13. The ARP must retain the necessary documentation of ARC transactions in accordance with the Manual of Administrative Procedures.

14. The ARP and his employees will be required to receive training on claims reporting and fraud recognition. For current ARPs and employees, such training must be completed within six (6) months of the initial implementation of the MAIP. For new ARPs, such training must be completed within six (6) months of certification by the Governing Committee or its designee to immediately submit motor vehicle insurance policies for placement through the MAIP with an ARC. For new employees, such training must be completed within six (6) months of hire. Any fraud training program that receives three CEU credits from the Massachusetts Division of Insurance will satisfy the claims reporting and fraud recognition training requirement. No other training that an ARC provides to its producers is sufficient to meet the claims reporting and fraud recognition training requirement set forth in this paragraph.
15. The ARP must notify the MAIP and the ARC of any suspected fraud surrounding a loss.
16. The ARP must cooperate with ARC and MAIP personnel during all audits and investigations.
17. The ARP and his or her employees are prohibited from accepting a fee or any other monetary or tangible property for referring the insured or parties to an accident to any glass, repair or rental facility, or to any legal or medical provider.
18. ARPs shall provide referral information to consumers consistent with company practices under regulations relating to motor vehicle repairs.
19. ARPs who meet the producer certification requirements specified in this Rule after April 1, 2008, shall develop and maintain a book of business as required in Section C of this Rule.

C. Production Criteria

Each ARP that meets the producer certification requirements specified in Rule 31 after April 1, 2008 shall be reviewed annually by the MAIP on the anniversary of his/her certification date. Those ARPs who within the first twelve (12) months after their appointment date as an ARP fail to develop a total book of business of at least one-hundred (100) private passenger motor vehicles, those ARPs who within twenty-four (24) months following their appointment date fail to develop a total book of business of at least two-hundred, fifty (250) private passenger motor vehicles, those ARPs who within thirty-six (36) months following their appointment date fail to develop a total book of business of at least four-hundred (400) private passenger motor vehicles, and those who subsequently fail to maintain a total book of business of at least four-hundred (400) private passenger motor vehicles as of their annual evaluation date, will have their certifications revoked unless the Governing Committee or its designee determines particular circumstances exist that merit a continuation of the certification.

The MAIP shall be responsible for providing the results of the evaluation to the ARP within fifteen (15) days of the evaluation date. The effective date of revocation shall be one year after the evaluation date on which the ARP failed to develop or maintain the applicable minimum book of business. If during the twelve (12) month run-off period, the ARP obtains and maintains the applicable minimum book of business, the certification revocation process shall be suspended and the ARP shall continue to be subject to annual evaluations.

D. Service Fees

1. G.L. c. 175, § 182, in part, prohibits producers and others in connection with the placing or negotiation of insurance policies or the continuance or renewal thereof from selling or offering to sell anything of value whatsoever not specified in the policy of insurance. See also G.L. c. 176D, § 3(8). The following acts and practices are prohibited:

- a. Charging a fee in addition to the premium for certifying a registration on behalf of an ARC;
 - b. Charging a fee in addition to the premium for acting as a producer and placing the applicant's motor vehicle insurance business with an ARC;
 - c. Charging a fee in addition to the premium for providing assistance to the insured in the completion of forms which are completed in order for the insured to procure or to continue motor vehicle insurance; and
 - d. Charging a fee in addition to the premium for the sale of a "service contract" which provides for service or advice relating to the issuance, continuance, or renewal of an insured's motor vehicle insurance policy.
2. Nothing set forth in the provisions above is intended to prohibit producers from charging courier fees and other non-insurance related fees if the following requirements are met:
- a. The producer provides to the applicant a complete description of the non-insurance related services for which the fee, in addition to the premium rate, is being charged;
 - b. The producer advises the applicant that there is no obligation to purchase the non-insurance related service and that the insured may obtain motor vehicle insurance through the producer, notwithstanding the insured's decision not to purchase the non-insurance related services;
 - c. The applicant, after having been apprised of the above information, agrees to pay the fee; and
 - d. The fee for the services provided is reasonable.

3. The producer may enter into a contract with the applicant, pursuant to which the producer provides non-insurance related services to the applicant if the producer complies with all of the requirements above. In the event the producer and applicant execute such a "service contract", the producer shall give to the applicant an executed copy of the contract and shall retain an executed copy in his or her file that shall be made available to the ARC, Division of Insurance and the MAIP upon request.

E. Certification Ineligibility

1. Grounds for revoking the certification of an ARP shall be as provided in Rule 30 – Assigned Risk Company Responsibilities and 31 – Assigned Risk Producer Responsibilities. Any licensed property or casualty producer who within the preceding twenty-four (24) month period, has had an ARP certification revoked with the said revocation not having been reversed by the Governing Committee, the Division of Insurance, or court of competent jurisdiction, shall be ineligible to place business with the MAIP.
2. An ARP having its certification revoked for failure to meet minimum production criteria as provided in Rule 31.C shall be ineligible for recertification for a period of two (2) years commencing on the effective date of the revocation.
3. For purposes of this section, the term Assigned Risk Producer includes any licensed producer with whom or which the ARP whose certification as been revoked has a direct or indirect material and continuing proprietary or management interest.

ARPs whose certification is revoked in conjunction with these Rules must return all MAIP forms, manuals and certification stamp(s) as well as any materials supplied by an ARC at such time as the revocation becomes effective. The ARP may appeal the revocation in accordance with the procedures specified in Rule 40 – Hearings, Review.

The Governing Committee shall establish and monitor procedures for the review of claim practices of ARCs to insure compliance with the “Performance Standards for the Handling and Payment of Claims”. National Association of Insurance Commissioners guidelines are incorporated where applicable into the Performance Standards. The MAIP will conduct periodic audits of ARC claims including policies in the MAIP and voluntarily written as specified in G.L. c.175, §113H.

- A. Claim Practices of Each ARC Shall Comply with the Requirements of G.L. c. 175, § 113H. ARCs shall, in accordance with the Performance Standards and the MAIP’s Rules:
1. Comply with the standards for prompt investigation of claims. Upon receipt of a new claim, investigate policy information for garaging, listed operator, prior accidents, or any other issues. Information developed may be used to affirm or deny claim payments. Discrepancies shall be communicated to the Underwriting Department and the premium recalculated and billed if appropriate and in accordance with Division of Insurance requirements;
 2. Affirm or deny coverage of claims within a reasonable period of time;
 3. Effectuate prompt, fair and equitable settlements of claims in which liability is reasonably clear;
 4. Maintain claim reserving procedures for all applicable claims;
 5. Conduct internal claim quality audit of a reasonably representative number of claim files on MAIP business, commensurate with their procedures for audit of claims on voluntary business, in order to verify compliance with the Performance Standards. With sufficient frequency to reflect reasonable continuity of their quality controls, ARCs shall prepare internal reports summarizing the efforts and conclusions of their claim department quality audit. Reports shall consolidate comments relative to both the MAIP and voluntary claim adjustment. Report format shall be at the discretion of each ARC, or as may be requested from time to time on an individual basis by the Governing Committee, or the Committee’s designee;

6. Establish complaint handling procedures, and maintain complete records of all complaints received on claims related to both the MAIP and voluntary business. ARCs shall maintain records reflecting the number of complaints received annually. For purposes of this Rule, the term "complaint" shall mean any written communication initiated by the complainant primarily expressing a grievance;

ARCs shall also maintain and forward to the MAIP, records on all written complaints filed on all producers;

7. Acknowledge and act promptly upon communications regarding claims;
8. Promptly provide a reasonable explanation for denial of a claim or for the offer of a compromise settlement;
9. Resolve inter-company subrogation disputes involving Physical Damage and Personal Injury Protection claims through arbitration;
10. Have direct telephone reporting available for first and third party claims;
11. Provide producers with a list of approved inspection services for conducting pre-inspections. Appraisers shall report when the damage is inconsistent with the description of the loss; and
12. ARCs shall offer training on claim reporting and fraud recognition to producers and their customer service representatives. Such training shall be completed for current producer and customer services representatives within six (6) months of approval of this Rule and for new producers and customer services representatives within six (6) months of licensing or employment.

- B. In the handling of MAIP claims, ARCs shall not:
1. Misrepresent pertinent facts or policy provisions relating to the coverage at issue;
 2. Refuse to pay claims without having conducted a reasonable investigation based upon all available information; and
 3. Fail to promptly settle claims, where liability is reasonably clear, under one portion of the policy coverage in order to influence settlements under other portions of the policy coverage.
- C. Every ARC shall maintain a special investigative unit to investigate suspicious claims for the express purpose of eliminating fraud and shall specifically report to the MAIP evidence of fraud pertaining to theft or misappropriation of a private passenger motor vehicle on policies issued through the MAIP as provided in the Manual of Administrative Procedures. Special investigative units so established shall be organized and operated to investigate claims on any policies that are issued through MAIP and on policies issued on a voluntary basis by ARCs. The special investigative unit shall investigate suspicious circumstances surrounding underwriting, rating, and premium issues. A claim shall not be investigated by such a unit solely on the basis that such claim arises from a policy issued through the MAIP. The special investigative unit also shall conduct an audit on a representative sample of policies to verify garaging and policy facts.
- D. Compliance with Performance Standards. An error tolerance of ten percent (10%) for procedures and seven percent (7%) for claim resolution will be used to measure compliance with the Performance Standards. Failure to meet the standards or other requirements described in this Rule may result in penalties as directed by the Performance Standards or as may be otherwise imposed by the Governing Committee.
- E. Dishonesty
- Loss or expense resulting from the dishonesty of those employed to handle claims shall be the sole responsibility of the ARC.

F. Claim Contingency Procedures

1. Terminations

An ARC whose appointment is terminated as provided in Rule 38 shall, subject to the provisions of Rule 32 - Claim Practices, service to a conclusion all claims against all policies issued by it in its capacity as an ARC and in effect prior to the date of termination. "Service to a conclusion" shall mean until the claim is properly closed, or until an agreed date.

2. Other Terminations

Upon notice from the Governing Committee of the non-voluntary termination of a company's appointment as an ARC, the MAIP shall examine a representative sample of open claim files to determine the amount of work completed, to estimate the future cost of servicing the claims to a conclusion, and to verify compliance with Rule 32 - Claim Practices. Findings from that examination shall be reviewed with the Claims Advisory Committee, which shall present to the Governing Committee for its consideration the recommendations of the Claims Advisory Committee for the further servicing of said ARC claims.

Each Member shall furnish or cause to be furnished to the Statistical Agent all statistical data in connection with private passenger motor vehicle insurance policies which may be required by the Commissioner's Statistical Plan, and which is not in conflict with Chapter 365 of the Acts of 1977, including data to be used in conjunction with the MAIP merit rating plan. Each Member agrees to permit the Commissioner's Statistical Agent to release statistics to the MAIP Governing Committee as are necessary to operate the MAIP.

Private Passenger Motor Vehicle insurance policies written by an ARC directly or pursuant to a LADA subject to the Plan and Rules of the MAIP shall be subject to a review and audit in a manner and time determined by the Governing Committee. Each ARC authorizes the MAIP to audit any portion of its Private Passenger Motor Vehicle insurance business that has a bearing on any credits, penalties, determination of assigned Quota Share or any other issue relating to such business.

Expenses of the MAIP, including all costs of operating the MAIP and all costs, charges, expenses and liabilities and all income, property and other assets which the Governing Committee determine not to be properly chargeable to the profit or loss of risks placed in the MAIP by Members, shall be shared among each Member based upon the proportion that each Member's Massachusetts direct written motor vehicle insurance premiums which are reported on its Annual Statement for the most recent calendar year bear to the total of such premiums for all Members. Assessments for the expenses of the MAIP shall be levied on a quarterly basis or as frequently as the Governing Committee deems necessary.

Premium from those classifications and/or coverages that are not statistically reportable to the MAIP (those classes or coverages not specified in the Massachusetts Private Passenger Statistical Plan) and all premium from Antique Vehicles (Classification Code 0483) is excluded from this calculation.

A. Limited Assignment Distribution Agreement

A Member may enter into a contract, called a Limited Assignment Distribution Agreement (LADA), with an ARC, under which the Member transfers its obligation to provide private passenger motor vehicle insurance policies to risks assigned to it through the MAIP to the ARC and the ARC agrees to assume liability for and service all of the Member's MAIP assignments in exchange for a negotiated fee. The LADA must provide that:

1. The ARC is responsible for servicing the other Member's MAIP assignments in addition to its own MAIP assignments;
2. The ARC is solely responsible for ensuring that its practices comply with all MAIP Rules, state laws and regulations with respect to all business serviced, including business serviced under LADAs;
3. The ARC assumes all of the other Member's legal liabilities with respect to the Member's MAIP assignments; and
4. The ARC offers the same premiums and provides the same level of service to the other Member's MAIP assignments as it does to its own MAIP assignments.

B. Eligibility Requirements for ARCs Entering Into LADAs

To be eligible to enter into a LADA(s) with another Member(s), an ARC must apply for and receive approval from the Commissioner. The ARC's application to the Commissioner should include a recommendation from the Governing Committee regarding the ARC's application.

An ARC must meet and continuously maintain all of the following operating requirements, in addition to the requirements contained in Rule 30:

1. Directly write at least one percent (1%) of Massachusetts' voluntary private passenger motor vehicle non-fleet property damage liability car years. If the individual company does not meet the one percent (1%) market share requirement and is part of a group of companies under common ownership, control or management, the voluntary direct written private passenger motor vehicle non-fleet property damage liability car years of all companies in the group combined may be used to fulfill this requirement;
2. Have a statutory capital and surplus of at least \$25,000,000;
3. Have and maintain a net premium to surplus ratio that does not exceed 2 to 1;
4. 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;
5. Have been licensed to write motor vehicle liability insurance and physical damage insurance without restriction in the United States or its territories or possessions for a minimum of five (5) years;
6. Have a facility to issue policies and to provide policyholder services, including a process for the reporting and resolution of policyholder complaints; and

The Commissioner may consider a LADA application from an ARC that does not meet the one percent (1%) market share requirement or the 2 to 1 net premium to surplus ratio requirement.

If at any time an ARC does not meet one or more eligibility requirements, the ARC immediately must notify the MAIP and the Commissioner.

C. Assignment Volume Limitation Under LADAs

When the estimated MAIP private passenger motor vehicle non-fleet quota share premium based upon the first quarter quota share distribution is greater than \$5 million, each ARC with a LADA shall be subject to a limitation on the additional MAIP assigned exposures it may write on behalf of other Members pursuant to a LADA. This limitation shall be established annually in accordance with the following formula:

$$\text{Limitation} = \frac{\text{Market Share of Members Eligible to Enter Into LADAs}}{\text{Number of Active ARCs w/ LADAs}} + 10\%$$

Where:

- i. The market shares of all Members eligible to enter into a LADA as described in Rule 36.D includes the market shares of Members with LADAs (including those described in Rule 32.D.2) and the market shares of Members who otherwise satisfy the eligibility requirements of Rule 36.D.1.
- ii. Active ARCs with LADAs includes only those ARCs receiving MAIP assignments through a LADA. In order to qualify as an active ARC with LADAs, the ARC must have a market share of at least 10% of all MAIP assignments made under LADAs.
- iii. Example: Assume there is only one ARC that services MAIP business through LADAs, and that the voluntary market share of Members eligible to enter into LADAs is 15%. The single ARC may enter into LADAs to service up to 25% of the potential MAIP assignments of other Members eligible to enter into LADAs.

The resulting percentage shall be rounded to the nearest whole percentage. This standard is applicable to existing ARCs with Limited Assignment Distribution Agreements.

The limitation on additional MAIP assignments that ARCs may service on behalf of other Members under LADAs shall be subject to annual review by the Governing Committee.

D. Eligibility Requirements for Members That May Be Excused From Their Servicing Carrier Obligations

1. Members with private passenger non-fleet MAIP quota shares that write five percent (5%) or less of Massachusetts voluntary private passenger non-fleet direct property damage liability written car years may be excused from their servicing carrier obligations and may enter into a LADA with an ARC.
2. Members with a private passenger non-fleet MAIP quota share whose market share of the Massachusetts voluntary private passenger motor vehicle non-fleet direct property damage liability written cars year is five percent (5%) or greater may apply to the Commissioner to waive the market share requirement. The Commissioner may grant or deny such a request, or revoke an existing market share waiver, at her discretion, for the benefit of the MAIP.
3. Annually, all market share waivers will be reviewed by the Commissioner based upon each Member's first quarter quota share distribution reports. Any Member whose market share equals or exceeds five percent (5%) may have its market share waiver revoked. If a Member's market share waiver is revoked by the Commissioner, the MAIP shall notify the Member and the ARC by June 30 that the LADA will terminate as of December 31 of that calendar year.
4. The eligibility requirements described in Rule 36.D.1 through Rule 36.D.3 are not in effect when the estimated annual MAIP private passenger quota share premium is \$10 million or less. In this instance, any Member with a Quota Share has the option to enter into a LADA. If the estimated MAIP private passenger quota share premium exceeds \$10 million, the Governing Committee shall be guided by the procedure in Rule 36.G.

E. Monitoring ARC Eligibility To Enter Into LADAs

The MAIP will review annually the eligibility of each ARC to enter into LADAs to ensure the ARC continues to meet the eligibility requirements in Rule 36.B. Such review may include, but is not limited to, verification of any or all of the eligibility criteria in Rule 36.B, review of quarterly financial statements filed by the ARC with the Division of Insurance, and monitoring the volume of LADA business written in relation to any applicable assignment volume limitation in Rule 36.C.

If the MAIP determines that an ARC no longer meets one or more of the eligibility requirements in Rule 36.B, the MAIP shall immediately provide written notification to the ARC, the Governing Committee and the Commissioner. If the ARC advises the MAIP that it no longer meets one or more of the eligibility requirements in Rule 36.B, the MAIP shall verify such information and provide written acknowledgement to the ARC. The MAIP immediately shall advise the Governing Committee and the Commissioner, in writing, that the ARC no longer meets one or more of the eligibility requirements of Rule 36.B. The Governing Committee may take such action as it deems necessary, including establishing a period of time for the ARC to remedy the cause of ineligibility, or recommending the Commissioner terminate the LADA.

F. Monitoring ARC Servicing Capacity Under LADAs

The MAIP will review the volume of MAIP assignments written by ARCs under LADAs on a quarterly basis and advise the Governing Committee.

If an assignment volume limitation exists under Rule 36.C, MAIP's review may include an estimate as to when an ARC might approach, meet, or exceed, the limitation. The MAIP will provide the ARC and the Governing Committee with written notification on the status of the ARC's capacity to continue to accept MAIP assignments under LADAs.

The MAIP will bring any ARC that is expected to exceed, or has exceeded, the assignment volume limitation to the attention of the Governing Committee. The ARC shall be provided at least 20 days advance written notice of the Governing Committee meeting at which the matter will be discussed. During the period between notification to the ARC of meeting or exceeding its assignment volume limitation and the date of the Governing Committee meeting, the ARC may continue to accept assignments under its LADAs.

If an ARC is expected to exceed its assignment volume limitation, or has exceeded its assignment volume limitation, Governing Committee remedies shall include, but are not limited to, one or more of the following:

1. Prohibit the ARC from entering into and negotiating any new LADAs and continue servicing MAIP assignments under existing LADAs;
2. Solicit for one or more additional ARCs to offer LADAs; or
3. Employ any other remedy deemed appropriate by the Governing Committee and approved by the Commissioner.

G. Annual Review of Estimated Plan Premium Volume

Annually, the MAIP will review the estimated private passenger motor vehicle MAIP quota share premium volume when the first quarter quota share reports are distributed. The MAIP will advise the Governing Committee whether the estimated MAIP private passenger motor vehicle quota share premium volume is less than, meets, or exceeds \$10 million. The Governing Committee shall be governed by the following:

1. If the MAIP estimated private passenger quota share premium volume is \$10 million or less, all Members with private passenger motor vehicle non-fleet MAIP Quota Shares may enter into a LADA.
2. If the MAIP estimated private passenger motor vehicle quota share premium volume exceeds \$10 million, the Governing Committee may, at their discretion:

- a. Reinstate the market share eligibility requirement set forth in Rule 36.D in accordance with the procedure set out in Rule 36.H;
- b. Solicit for another ARC to service MAIP business under LADAs;
- c. Continue to offer all Members with MAIP Quota Shares the option to enter into a LADA until such time as the Governing Committee determines further action is necessary;
- d. Implement a combination of b. and c. above; or
- e. Take any other action deemed appropriate by the Governing Committee.

H. Reinstatement of Eligibility Requirements For Members to Enter Into LADAs

If the eligibility requirements for Members to enter into LADAs are reinstated by the Governing Committee in accordance with 36.G, the MAIP shall be guided by the following:

1. All ARCs and Members shall be notified by June 30 that the eligibility requirement in Rule 36.D.1 will be reinstated as of January 1 of the new calendar year.
2. Members with MAIP private passenger motor vehicle insurance Quota Shares that meet the eligibility requirement in Rule 36.D.1 may enter into a LADA with an ARC as of January 1 of the new calendar year.
3. Current Members with LADAs pursuant to Rule 36.D.2 shall be notified in writing by June 30 that their LADA(s) are terminated as of December 31 and that they should prepare to receive their own MAIP assignments as of December 31 of that calendar year.
4. Members with market shares of five percent (5%) or more may apply to the Commissioner for a market share waiver in accordance with the procedure in Rule 36.D.2.

I. Approval of LADAs

The Governing Committee shall ratify all LADAs which have been reviewed and approved by the MAIP with the fee provision of the contract omitted. The LADA must contain provisions agreed upon by the ARC and the Member. The LADA also must contain provisions which provide that, with respect to any of the Member's in-force policies in existence at the time of the execution of the LADA, such policies shall continue to be serviced by the Member until their respective anniversary date. In addition, the LADA shall provide that, at least 45 days prior to the anniversary date of each affected in-force policy of the Member, the Member shall issue a non-renewal notice and the ARC shall provide the policyholder and producer of record with a renewal offer and, if accepted, issue the policy in accordance with these Rules.

The ARC shall be obligated to make a renewal offer for the remainder of the original three year assignment period. Upon issuance of the initial renewal offer by the ARC, the Member subject to the LADA shall be relieved of its obligation with regard to the three year assignment period.

The LADA may start on a date agreed upon by the Member and the ARC and approved by the MAIP and, thereafter, shall run to the end of that calendar year. LADA contracts are renewable each calendar year by agreement of the Member and the ARC.

Once the MAIP has reviewed and approved the LADA between the ARC and the Member, the MAIP will send all assignments for all Members subject to the LADA to the ARC. At least annually, the MAIP will indicate how much of the LADA business was needed to fulfill each Member's assigned Quota Share. Any over/under assignment of the Member's assigned Quota Share subject to the LADA will be attributed to the ARC.

J. Termination of LADAs

A LADA may be terminated by either the ARC or the Member in accordance with the terms and conditions of the contract. If a conflict exists between Rule 36 and the LADA, the provisions of Rule 36 shall apply.

ARPs will be paid the same average commission for private passenger risks insured through the MAIP as are paid for voluntary risks in accordance with the private passenger motor vehicle insurance rates on file with the Commissioner.

For MAIP business, ARPs that are not operating under the so-called American Agency System will be paid the same average commission as those that are operating under the American Agency System.

Nothing in this Rule is intended to alter any statutory obligation relating to commission payments.

A. Assigned Risk Company Terminations

1. Involuntary Terminations of an ARC

a. Involuntary Termination by the MAIP

In the event that it becomes necessary for the Governing Committee to terminate an ARC from the MAIP, notice shall be given in writing by the Chairman of the Governing Committee to the Chief Executive Officer of the ARC. Such notice shall specify a period of time of no less than six (6) months or such earlier time as the parties may mutually agree, at which time the MAIP will no longer assign new business to the ARC. The notice to the terminating ARC will stipulate further that the ARC shall continue to service its existing MAIP business until the expiration of the three-year assignment period for each of its MAIP assignments, unless the parties shall have mutually agreed to other arrangements for the service of such assignments and such arrangements have been approved by the Commissioner.

b. Involuntary Termination by the Commissioner

The Commissioner may terminate any ARC which he/she determines to have violated the standards established for ARCs in these Rules, or the Plan, or if he/she finds that the operation or financial stability of such ARC presents a danger to the interests of policyholders or the continued operation of the MAIP or will create substantial market disruption. If the Commissioner terminates an ARC, the ARC shall continue to service its existing MAIP business until the expiration of the three-year assignment period for each of its MAIP assignments, unless the Commissioner orders other arrangements for the service of such assignments.

2. Approval by the Commissioner of ARC Terminations

No termination of an ARC will become effective until approved by the Commissioner. In granting approval, the Commissioner will consider the impact of such termination on policyholders, producers and brokers, and the market for private passenger motor vehicle insurance. The ARC shall continue to services its MAIP business after the termination becomes effective until the expiration of the three-year assignment period for each of its MAIP assignments, unless other arrangements for the service of such assignments has been approved by the Commissioner.

3. If the terminating ARC has executed LADAs with other Members at the time of its termination, the MAIP and the Governing Committee shall be guided by the following.

a. The terminating ARC will continue to receive assignments under its LADAs until the termination date. The terminating ARC must continue service all business assigned under LADAs until the end of the three year assignment period has been reached, unless otherwise directed by the Governing Committee and approved by the Commissioner.

b. The MAIP will provide Members with which the terminating ARC has LADAs at least 90 days' written notice of termination of the ARC and cancellation of the LADA. Such notice shall indicate that the Member must either seek a LADA with another ARC, or be prepared to receive and write its own MAIP assignments.

c. The terminating ARC shall be responsible for its own MAIP assignments after termination of the LADA. The terminating ARC also may seek to enter a LADA with another ARC for the terminating ARC's own MAIP assignments.

4. In the even an ARC experiences unanticipated or unusual operations difficulties that would impair its ability to continue to meet the established ARC performance standards, the Governing Committee, subject to the approval of the Commissioner, may take such action as it may deem appropriate to alleviate the difficulties. Such actions by the Governing Committee shall be taken when it is evident the interest of the insuring public and the industry would be better served.

B. Members Electing to Withdraw from the Massachusetts Private Passenger Motor Vehicle Insurance Market

A Member electing to withdraw from the Massachusetts private passenger motor vehicle insurance market shall file a withdrawal plan for an orderly withdrawal that shall include full settlement of all financial obligations to the MAIP, as well as provide that the Member shall either continue to service its existing MAIP business until the expiration of the three-year assignment period for each of its MAIP assignments, or has made other arrangements for the service of such assignments, as approved by the Commissioner. Approval of the withdrawal plan for purposes of this section shall mean written approval by the Commissioner. Prior to approval, the Commissioner shall hold a public hearing if requested to do so by the Governing Committee of the MAIP, a Member of the MAIP, or any association of producers, to consider the effect of the withdrawal on the orderly and equitable conduct and operation of the Massachusetts private passenger motor vehicle insurance market. Any such party seeking a hearing must file a request with the Division of Insurance within ten (10) days of notice by the Division of Insurance to CAR of the opportunity for a hearing. Copies of the withdrawal plan shall be made public at the time of such notice.

Nothing in Rule 38 shall in any manner be deemed to act or modify or reduce an ARC's or a Member's obligations under the Plan, Rules or Operation, or Manual of Administrative Procedures.

- A. Any person or Member made, or threatened to be made, a party to any action, suit or proceeding, because such person, or any officers, employee or representative of such Member, served on the Governing Committee or on any committee of the MAIP or was an officer or employee of the MAIP, shall be indemnified by the MAIP against all judgments, fines, amounts paid in settlement, reasonable costs and expenses including attorneys' fees, and any other liabilities that may be incurred as a result of such action, suit or proceeding, or threatened action, suit or proceeding, except in relation to matters as to which he or it shall be adjudged in such action, suit or proceeding to be liable by reason of breach of duty involving gross negligence, bad faith, dishonest, willful misfeasance or reckless disregard of the responsibilities in the performance of his or its duties or obligations to the MAIP and, with respect to any criminal actions or proceedings, except when such person or Member had reasonable cause to believe that his or its conduct was unlawful. Such indemnification shall be provided whether such person or Member is a Member or is holding office or is employed at the time of such action, suit or proceeding and whether any such liability is incurred prior to the adoption of this Rule. Such indemnification shall not be exclusive of other rights such person or Member may have and shall extend to the successors, heirs, executors or administrators of such person or Member. In the event of settlement or other termination of a matter before final adjudication, indemnification shall be provided only if the Governing Committee determines with the advice of independent counsel that the person or Member to be indemnified did not in counsel's opinion commit such a breach of duty.

- B. In each instance in which a question of indemnification arises, entitlement thereto, pursuant to the conditions set forth in the first paragraph of this Rule, shall be determined by the Governing Committee which shall also determine the time and manner of payment of such indemnification; provided, that a person or Member who or which has been wholly successful, on the merits or otherwise, in the defense of a civil or criminal action, suit or proceeding of this character described in the first paragraph on this Rule shall be entitled to indemnification as authorized in such paragraph. Nothing herein shall be deemed to bind a person or Member who or which the Governing Committee has determined not to be entitled to indemnification, or to preclude such person or Member from asserting the right to such indemnification by legal proceedings. Such indemnification as is herein provided shall be considered an operating expense apportioned among all Members, including any named in any such action, suit or proceeding, according to the Expense Ratio deemed by the Governing Committee to be most appropriate.

- A. Any Member or licensed producer aggrieved by any unfair, unreasonable, or improper practice of the MAIP or another Member with respect to the operation of the MAIP may request a formal hearing and ruling by the Governing Committee on the alleged practice. The request for hearing must be made within thirty (30) days after the date such person knew of the alleged practice. Any documentation or correspondence which either party wishes to have considered in connection with the deliberations of the matter should be forwarded to the MAIP at least five (5) business days prior to the date scheduled for the hearing.

The hearing shall be held within fifteen (15) business days after the receipt of the original request. Except as may be otherwise provided by the Governing Committee, the hearing shall be held by a panel appointed by the Governing Committee, consisting of three (3) Governing Committee members entitled to vote. The decision of this panel or any committee sitting at the request of or under the authority of the Governing Committee shall be rendered within fifteen (15) business days of the hearing. The ruling of the majority of the panel shall be deemed to be the formal ruling of the Governing Committee unless the full committee on its own motion shall modify or rescind the panel's action.

- B. Any formal Governing Committee ruling may be appealed to the Commissioner by filing a notice of appeal with the MAIP and the Commissioner within (30) thirty days after the date of the ruling's issuance. The Commissioner may approve, modify, amend or disapprove the ruling or direct the Governing Committee to reconsider the ruling. In addition, the Commissioner may issue any other appropriate order, including granting the aggrieved party a new hearing.