



COMMONWEALTH AUTOMOBILE REINSURERS

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RALPH A. IANNACO
PRESIDENT

October 17, 2008

BULLETIN NO. 885

DECISION

PROPOSED CHANGES TO RULES OF OPERATION

- Rule 11 – Assessments and Participation
- Rule 13 – Servicing Carrier Requirements
- Rule 21 – General Provisions
- Rule 27 – Coverages
- Rule 29 – Assignment Process
- Rule 30 – Assigned Risk Company Requirements

The proposed changes to the Rules of Operation amending the Rules listed above were filed with the Commissioner of Insurance on September 17, 2008. The proposed changes were furnished to all members and interested parties as Bulletin No. 882, dated September 17, 2008.

Under the provisions of Article X of the Plan of Operation, a proposed Rule of Operation becomes effective either upon approval by the Commissioner of Insurance, or upon expiration of thirty days from the time of submission, provided that no public hearing was requested within five days by an interested party and the Commissioner has not otherwise disapproved the Rule change within the thirty-day period.

The Commissioner of Insurance has, in correspondence dated October 17, 2008 to Ralph A. Iannaco, President of CAR, issued her decision on the proposed amendments. A copy of the decision is attached.

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

Attachment



COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

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October 17, 2008

VIA ELECTRONIC AND REGULAR MAIL

Ralph A. Iannaco, President
Commonwealth Automobile Reinsurers
225 Franklin Street
Boston, Massachusetts 02110

Re: Proposed Amendment to Rule 11 and 13 of the CAR Rules of Operation and Rules 21, 27, 29 and 30 of the MAIP Rules

Dear Mr. Iannaco:

On September 17, 2008, the Governing Committee of the Commonwealth Automobile Reinsurers ("CAR") voted to amend Rules 11 and 13 of the CAR Rules of Operation and Rules 21, 27, 29 and 30 of the Massachusetts Automobile Insurance Plan ("MAIP"). The proposed amendments were distributed to CAR members and submitted to me for my review. My decision regarding each rule is as follows:

Rule 11

I approve the proposed amendments to Rule 11 with the exception of the minimum allowable provision which appears on page six of 17. This provision contains a typographical error as it refers to "policy years 2009" rather than "policy year 2009." I approve these proposed amendments subject to this correction.

Rule 13

The proposed amendments to Rule 13 change the attribution rules for measuring subscription when ERPs are offered voluntary contracts by successor carriers for private passenger motor vehicle insurance.

The ERP subscription report monitors each servicing carrier's number of ERP produced exposures to ensure that each servicing carrier is servicing its "ought to have" share of these

exposures. A servicing carrier's ought to have share of ERP produced exposures is equal to its percentage of the total market multiplied by the sum of all servicing carriers' ERP exposures. A servicing carrier is oversubscribed if it is servicing more than its ought to have share of ERP produced business and is undersubscribed if it is servicing less. An oversubscribed servicing carrier may request a redistribution of ERPs under this rule in order to bring it closer to its ought to have share of ERP produced exposures.

CAR's proposed changes to Rule 13.C.1.c.(2) provide that if an ERP obtains a voluntary appointment with a successor carrier, CAR will count the ERP's exposures as "voluntary" at the time that each exposure is written by the successor carrier. The ERP's exposures would be removed immediately from the book of the ERP's previous servicing carrier as soon as CAR receives notification of the voluntary contract. The effect of the proposed change is that there will be an immediate reduction in the total number of ERP exposures produced by all servicing carriers, thereby immediately changing each servicing carrier's subscription share of total ERP exposures. While the ERP's former servicing carrier will experience an immediate reduction in its subscription, the subscriptions of all other carriers will increase.

A change in subscription will result whether a servicing carrier gives a voluntary contract to its own ERP or to an ERP assigned to another carrier. When a servicing carrier gives its own ERP a voluntary contract, the servicing carrier's share of the total market declines immediately as does its subscription level. Other servicing carriers' subscription levels will rise immediately. If a servicing carrier gives a voluntary contract to an ERP assigned to a different carrier, the total market share of the carrier contracting with the ERP will gradually increase and may result in a higher subscription result in the near term. The subscription level for the ERP's prior servicing carrier will be reduced and the subscription level for the other servicing carriers will increase immediately as a result of that appointment.

The intended effect of the proposed rule change is to encourage carriers to offer voluntary appointments to ERPs. The proposal may have the unintended consequence, however, of creating volatility with regard to subscription and generating unreliable results for determining whether a company qualifies for subscription relief. I therefore disapprove the suggested changes to Rule 13.C.1.c.(2).

It is incumbent upon CAR to allocate fairly the financial losses and expenses generated by the current residual market pooling mechanism. The assignment of residual market risks through ERP assignment during this time of transition may become increasingly volatile because servicing carriers have different business models for distributing their products. The results of the subscription reports also lag real time by at least two months. Use of such reports becomes increasingly less likely to guarantee financial "relief" in connection with an ERP redistribution as companies position themselves in the waning hours of this residual market pool. A physical redistribution of the current residual market under these rules in the six months prior to the sunset of this pool also would be extremely disruptive to servicing carriers, producers and policyholders. Alternatives to a physical reassignment of ERPs must be explored for the purpose of allocating fairly the financial losses and expenses of the residual market for the next six months while causing minimal market disruption. For these reasons I am disapproving CAR's proposed changes to Rule 13.C.2.

In the final six months prior to the implementation of the MAIP, it is appropriate for CAR to consider procedural changes that serve to encourage market driven voluntary appointments of ERPs while ensuring access to the residual market for every consumer that is not yet eligible for insurance through the MAIP. It is also important that the effects of the final

transition do not present a disproportionate financial burden on any servicing carrier. Several different options exist that might be less disruptive to the market. One such option is that CAR consider suspending subscription reporting completely and agree to consider the effects of ERP assignments on deficit share after loss and exposure results through March 31, 2009 become available. CAR also could consider suspension of the current prohibition on two and three party agreements between ERPs and servicing carriers and non-servicing carriers from November 1, 2008 through March 31, 2009.

On a related note, Norfolk & Dedham Mutual Fire Insurance Company requested in a letter to me dated October 10, 2008, that I reconsider my letter to CAR dated October 9, 2008 informing CAR that it could process Amica Mutual Insurance Company's request for subscription relief if it qualifies for such relief under Rule 13. After further reconsideration in connection with the decision in this order and in consideration of Norfolk & Dedham's recent objection to Amica's request, CAR is directed to take no action on Amica's request under the current Rule 13.C.2. Any future requests from servicing carriers for physical reassignment of ERPs for the purposes of subscription relief under this current rule will be denied.

Rule 21

CAR proposes amending Rule 21 by adding a provision that a member may not non-renew any Clean-In-Three risks transferred to it pursuant to an ERP redistribution under Rule 13.C.2, unless that risk no longer meets the Clean-In-Three criteria as defined in Rule 22. This issue is moot as I disapproved those changes to Rule 13 requiring the physical redistribution of ERPs in order to grant subscription relief for oversubscribed servicing carriers.

Rule 27

CAR proposes amending Rule 27 by changing the amounts for Bodily Injury Liability, Uninsured Motorists and Underinsured Motorists to reflect the amount of Bodily injury Liability coverage mandated by G.L. c. 175, §113H. I approve these changes in substance, but am concerned that the introductory language proposed by CAR could be misconstrued. I therefore am amending the introductory language to read as follows:

An Eligible Risk, as defined in Rule 22 – Definitions, may choose to purchase up to the following limits for private passenger motor vehicle and, upon request, the ARC shall provide such coverage. An ARC is not required to provide coverage for any higher limits unless the ARC agrees to do so at the request of an Eligible Risk.

Rule 29

I approve the concept of excluding exposures voluntarily insured pursuant to rule 21.C but the proposed rule language appears broader than the scope of 21.C. I suggest the following language:

Exposures that qualify as a Clean-in-Three risk pursuant to Rule 22 as of the effective date of their current Private Passenger Motor Vehicle insurance policy will be adjusted by a factor of 0.0 provided all of the following conditions are met:

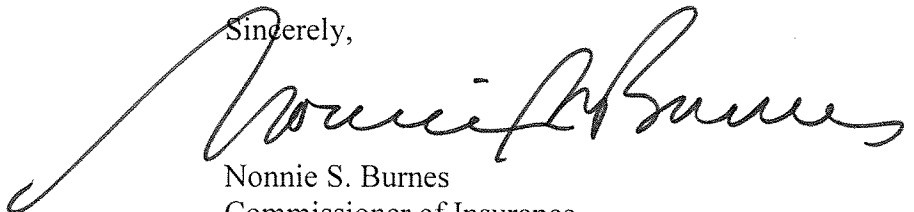
1. The operator was insured under a Private Passenger Motor Vehicle insurance policy issued by the ARC with an effective date between April 1, 2008 and March 31, 2009;
2. The producer of record for the policy effective between April 1, 2008 through March 31, 2009 that insured the operator was exclusively assigned to the Member by CAR;
3. The producer of record for the operator has not changed since March 31, 2009; and
4. The producer of record has not obtained a voluntary appointment for selling Private Passenger Motor Vehicle insurance policies in Massachusetts at any time between March 31, 2008 and earlier of the policy effective date or March 31, 2011.

I approve the proposed changes regarding the buying and selling of excess credits in Rule 29.G.

Rule 30

I approve the amendment to Rule 30 regarding the obligations of assigned risk companies relative to clean-in-three business with the proviso that it be moved to Rule 21.C and numbered paragraph four. I also instruct CAR to add the following sentence after this new provision: "The producer's commission and the term of commission payments are governed by Rule 30.C.1.d."

Sincerely,



Nonnie S. Burnes
Commissioner of Insurance