



COMMONWEALTH AUTOMOBILE REINSURERS

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RALPH A. IANNACO
PRESIDENT

February 25, 2009

BULLETIN NO. 894

PROPOSED CHANGES TO THE RULES OF OPERATION

At its meeting of February 25, 2009, the Governing Committee voted to amend the following Rules of Operation by deleting and adding the language as indicated on the attached copy. A copy of the Filing Letter, which contains an explanation of these Rule changes, is attached for your information.

The proposed Rules are listed below.

- Rule 14 – Representative Producer and Exclusive Representative Producer Requirements
- Rule 31 – Assigned Risk Producer Requirements

This Bulletin, with a copy of the proposed changes to the Rules as listed above, is being furnished to every Member Company as required in Article X of the Plan of Operation. Any Member Company may request a public hearing within five days of receipt of this Bulletin and Filing Letter, as provided by Article X of the Plan of Operation.

A proposed Rule shall become effective upon the written approval of the Commissioner or upon the expiration of 30 days after filing, provided the Commissioner has not previously disapproved the Rule in writing.

RALPH A. IANNACO
President



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RALPH A. IANNACO
PRESIDENT

February 25, 2009

Honorable Nonnie S. Burnes
Commissioner of Insurance
Massachusetts Division of Insurance
One South Station
Boston, MA 02110-2208

Dear Commissioner Burnes:

Rules of Operation

Rule 14 – Representative Producer and Exclusive Representative Producer Requirements

Rule 31 – Assigned Risk Producer Requirements

In accordance with the provisions of Article X of the Plan of Operation, I hereby file, at the request of the Governing Committee, the attached amendments to Rules 14 and 31 of CAR's Rules of Operation.

The attached amendments change Rules 14 and 31 by deleting and adding the language as indicated on the attached copy.

The remainder of Rules 14 and 31 is unchanged.

Explanation

The proposed amendments to Rule 14.H. and Rule 31.D. effect the termination or decertification of all residual market automobile appointments or certifications should the producer be terminated for any violation(s) of CAR Rules in any one line of motor vehicle insurance, with the exception of a termination for failure to maintain production requirements.

The proposed amendment to Rule 31.B. clarifies the obligation of an Assigned Risk Producer to timely return commissions owed an Assigned Risk Company.

A copy of the proposed amendments to Rules 14 and 31 is attached hereto, and is being furnished to every Member Company, the two associations of insurance producers, and the Public Protection Division of the Office of the Attorney General, as required by Article X of the Plan of Operation.

Very truly yours,


Ralph A. Iannaco
President

RAI:kat

Attachments: Rule 14 – Representative Producer and Exclusive Representative Producer Requirements
Rule 31 – Assigned Risk Producer Requirements

cc: Exclusive Representative Producers of Massachusetts, Inc.
Massachusetts Association of Insurance Agents
Public Protection Division – Office of the Attorney General

A. Appointments

1. Representative Producer Appointments

Producers who have a voluntary producer agreement with any Member Company appointed as a Servicing Carrier in accordance with these Rules shall be assigned to represent those Servicing Carriers, as Representative Producers, as defined in Rule 2. for new and renewal private passenger or all other motor vehicle business or both, consistent with such voluntary producer agreement. Such Carriers shall service such Representative Producers under substantially the same contractual terms and conditions governing their normal agency relationship.

2. Exclusive Representative Producer Appointments

a. New Appointments

Any licensed producer who does not have a voluntary producer agreement for private passenger or commercial motor vehicle business with any Member Companies appointed as Servicing Carriers in accordance with these Rules or, as of January 1, 2006, any licensed producer who has not been appointed as a commercial Exclusive Representative Producer to one of the Member Companies which has been selected by the Governing Committee as a commercial Servicing Carrier, may apply for an appointment to represent a Servicing Carrier, as an Exclusive Representative Producer, as defined in Rule 2 for new and renewal business for which a voluntary agreement does not exist. The producer shall be subject to the provisions of the Eligibility Requirements (Rule 14.A.2.e.). If CAR determines the applicant has satisfied these eligibility criteria the applicant will be appointed to a Servicing Carrier as an Exclusive Representative Producer. Such Carriers shall service such Exclusive Representative Producers under substantially the same contractual terms and conditions governing their normal producer relationship.

For all private passenger Servicing Carriers and those commercial Servicing Carriers for December 31, 2005 and prior, if an applicant is applying as a consequence of the involuntary cancellation of a voluntary agency or brokerage agreement, as far as is possible, the appointment shall be made to an insurer other than that which last cancelled a voluntary agreement for motor vehicle insurance business with the applicant.

Newly qualified producers, with offices in market need areas as defined in Rule 2. who receive ERP appointments shall be assigned to Servicing Carriers whose total market share in that market need area is below their total market share statewide.

In the case of an applicant who is applying as a consequence of a voluntary producer agreement being terminated because the applicant (1) intentionally withdraws from a voluntary agreement to write motor vehicle insurance business on behalf of a Servicing Carrier, or (2) requests cancellation of a voluntary agreement for motor vehicle insurance business, or (3) engages in conduct which CAR concludes by its nature raises such issues as to the ethical or professional standards of the producer that would reasonably cause the voluntary Servicing Carrier to terminate its voluntary agreement, and the voluntary Servicing Carrier as a result of that conduct does so terminate the agreement with the producer, such producer is ineligible for appointment to a Servicing Carrier as an Exclusive Representative Producer.

b. Affiliated Producers

- (1) If an applicant for a private passenger appointment to represent a Servicing Carrier as an Exclusive Representative Producer, or a producer holding an involuntary (Exclusive Representative Producer) appointment, for private passenger commercial motor vehicle insurance business is found to have a direct or indirect material and continuing proprietary or management interest in another agency or brokerage firm which has a voluntary (Representative Producer) or involuntary (Exclusive Representative Producer) appointment to a Servicing Carrier for the same type of business or vice versa, the producer is presumed to be an affiliate of the other agency or brokerage firm and is ineligible for appointment, or for the continuation of an appointment, to a Servicing Carrier as an Exclusive Representative Producer for that type of business insofar as there exists a Servicing Carrier market through the affiliated agency.

An Exclusive Representative Producer that CAR determines has an affiliated voluntary relationship, as described in the preceding paragraph, which existed prior to January 1, 1991, may continue in that status only for so long as such voluntary relationship with the Servicing Carrier(s) is maintained. Business written through the Exclusive Representative Producer will be assigned the same CAR ID Codes as that written through the affiliated agency and the Servicing Carrier will not be entitled to additional fees as provided in Rule 17. or to the option provided by Rule 13.B.7.c., regarding cession backdates.

- (2) An applicant for a commercial Exclusive Representative Producer appointment determined to have an affiliated relationship or an existing commercial ERP identified as having an affiliated relationship will be assigned to the same Servicing Carrier as all members of the affiliated group.

An affiliation will be presumed to exist if the new applicant or existing ERP is found to have a contractual relationship or membership in a producer cluster or network, or is found to have a direct or indirect material and continuing proprietary or management interest in another agency or brokerage firm. Assignments emanating from the formation of an affiliated group for the sole purpose of placing commercial automobile business are prohibited.

- (3) An applicant for a commercial ERP appointment must identify any affiliated relationships at the point of application. An existing commercial ERP must notify its Servicing Carrier of any new affiliated relationship, or change in affiliated status within thirty (30) days of such change.
- (4) Annually as of the commercial ERP appointment date, each ERP will be required to furnish its Servicing Carrier with a completed affiliated agency disclosure form.
- (5) Failure to furnish the completed affiliated agency disclosure form will result in the termination of the ERP appointment for commercial motor vehicle business by the assigned Servicing Carrier. An ERP terminated under the provision of this section shall be provided a thirty (30) day written notice, and shall be ineligible for appointment to a Servicing Carrier for a period of two (2) years commencing on the effective date of the termination.
- (6) Any applicant aggrieved by staff's determination of its affiliated status may appeal to the Governing Committee and may present evidence to refute that determination. If the applicant is successful in refuting that determination, it will be appointed to a Servicing Carrier under the same terms and conditions as an Exclusive Representative Producer.

c. Voluntary Contracting

- (1) A producer which has an Exclusive Representative Producer appointment to a Servicing Carrier and which obtains a voluntary agreement with another Servicing Carrier or non-Servicing Carrier will retain the involuntary assignment for sixty (60) days from the date on which the voluntary contract is effective.
- (2) An existing Servicing Carrier who makes a voluntary contract offer to their own ERP will, with sixty (60) days notice, have the option to decline new and renewal business when the ERP enters in to a voluntary contract with a second Servicing Carrier.

d. Sale of Exclusive Representative Producer Business

If a producer which has an Exclusive Representative Producer appointment to a Servicing Carrier sells its stock or its book of business to a producer which does not have a motor vehicle insurance relationship with a Servicing Carrier, such appointment will inure to the purchaser subject to the eligibility requirements and production and market need criteria of this Rule, notwithstanding the location of the seller's place of business. If the Exclusive Representative Producer appointment was in a probationary status, as respects the above requirements or criteria, that status will carry over to the purchaser of this business.

If the sale does not result in the continuation of the appointment to the sellers' Servicing Carrier, then that Servicing Carrier shall enter an agreement with the purchaser whereby all risks written by the Servicing Carrier on behalf of the seller, for policies with an effective date as of 90 days subsequent to the date of the sale for renewal business and as of the date of sale for new business, will be fully serviced through the purchaser until the policy expiration date of each risk, as noted on the declaration page of each policy in force as of these respective dates.

Servicing shall include, but not be limited to, change of existing vehicles, adding insureds, adding named operators onto the existing policy, endorsing coverage limits, providing all notices required by law, claims processing and premium collection. All other obligations of both Servicing Carrier and producer as set forth pursuant to the Plan and Rules of Operation shall remain in force during the term of this agreement.

e. Eligibility Requirements

Prior to any action being taken on an application for an Exclusive Representative Producer appointment, the producer must satisfy the Governing Committee that he or she:

- (1) has completed a course of study, approved by the Commissioner of Insurance, which concentrates on the Massachusetts motor vehicle insurance system;
- (2) has attained a passing grade on a written examination based on material covered in the approved course;
- (3) has 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 automobile insurer, during which time the applicant's efforts were primarily devoted to the Massachusetts motor vehicle insurance market; and
- (4) will be addressing a market need as determined by criteria to be established by the Governing Committee of CAR.
- (5) for commercial appointments, has an existing commercial relationship with a non-Servicing Carrier or can provide letter(s) of intent from insureds identifying commercial policies expected to be written as of the first year of appointment that would satisfy the production criteria established in Rule 14.D.3. Continued eligibility is dependent upon compliance with the provisions of Rule 14.D.3.

- (6) Having satisfied 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 in Massachusetts, except licensed nonresident producers if licensed pursuant to Massachusetts General Laws;
 - (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/her producer's license to engage as an insurance producer revoked/suspended;
 - (f) has not been involved in a material and substantial breach of a contract between a Servicing Carrier and a producer;
 - (g) is not in default in remittance of any motor vehicle premiums due a Member company;
 - (h) agrees to comply with the provisions of the Plan of Operation, the Rules of Operation, the Manual of Administrative Procedures, the contract between the Exclusive Representative Producer and the Servicing Carrier, and the applicable regulations of the Division of Insurance;
 - (i) agrees to notify CAR and the Servicing Carrier of an agreement to sell the agency fifteen (15) days in advance of the proposed closing of any such sale and further agrees to obtain a certification from the Servicing Carrier, which shall be provided to CAR, that the agency does not owe to the Servicing Carrier any past due premium based upon the latest available statement;

(j) has not been declined an Exclusive Representative Producer assignment within the preceding sixty (60) days, said declination not having been reversed by the Governing Committee, the Division of Insurance or a court of competent jurisdiction.

(k) has not had an Exclusive Representative Producer assignment rescinded or cancelled by a Servicing Carrier as provided in Rule 14.H, or been terminated as an Exclusive Representative Producer for failure to meet minimum production criteria or market need criteria as provided in Rules 14.C and D within the preceding twenty-four (24) months, said rescission or cancellation not having been reversed by the Governing Committee, the Division of Insurance or a court of competent jurisdiction.

B. Ongoing Exclusive Representative Producer Requirements

1. It will be the ongoing responsibility of a producer which has an Exclusive Representative Producer appointment to a Servicing Carrier to fulfill the following requirements as well as the eligibility criteria in Rule 14.A.2.e. Failure to do so will be grounds for termination of said appointment.
 - a. Require of all new applicants for insurance that they complete in its entirety a new business application for insurance;
 - b. Report all coverage bound and all registrations/titles certified to the Servicing Carrier within two working days after binding coverage or certifying a registration;
 - c. Verify that the applicant has not been in default in the payment of any motor vehicle insurance premiums in the past twelve (12) months;
 - d. Comply with the reasonable written procedures supplied by the Servicing Carrier for processing claims;

- e. Forward to the insured within thirty (30) days of receipt from the Servicing Carrier, all policies and endorsements if not mailed directly by the Servicing Carrier to the policyholder;
- f. Remit payments on a timely basis in accordance with the provisions set forth in the contract between the Servicing Carrier and the Exclusive Representative Producer, however, a Servicing Carrier shall extend the payment period for an additional seven 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 Servicing Carrier directly. This provision shall not obligate a Servicing Carrier to provide such additional time if notwithstanding any written assurances the premium finance company has failed to perform its commitment previously;
- g. Notify the Servicing Carrier of any suspected fraud surrounding a loss;
- h. Cooperate with the Servicing Carrier and CAR personnel during all audits and investigations;
- i. Properly order endorsements;
- j. Order only those coverages from the Servicing Carrier requested by the insured, for which he may be eligible;
- k. Quote proper premiums based on information provided by the applicants for the coverage desired;
- l. Conduct all monetary transactions with the insured and the Servicing Carrier as required by the Rules of Operation and the Exclusive Representative Producer contract;
- m. Advise the premium finance company and/or the insured that checks for premiums for all financed accounts are to be made payable to the Servicing Carrier;

- n. Retain the necessary documentation of Servicing Carrier transactions in accordance with the Manual of Administrative Procedures;
- o. Notify the applicant for insurance that he has the option of utilizing an Installment Payment Plan;
- p. Comply with the Automobile Insurance Bureau Form 2-A Procedures relative to the use of the Notice of Transfer of Insurer form.
- q. Develop and maintain a book of business as required in paragraphs C. and D.
- r. Refrain from brokering private passenger business. Brokering, for the purposes of this Rule, shall mean the placing of private passenger motor vehicle insurance risks with a carrier on behalf of, or at the request of, another producer which has an appointment with a Servicing Carrier or non-Servicing Carrier of CAR for binding private passenger motor vehicle insurance risks, where the producer placing the risk pays to the other producer some form of compensation including, but not limited to, money, barter, services, or expense reductions or where the originating producer retains control or ownership rights of the motor vehicle risk.

Exclusive Representative Producers may engage in brokering risks pursuant to a brokerage agreement approved by their Servicing Carrier for the sole purpose of providing access by the ERP to its Servicing Carrier's private passenger automobile group marketing program(s). Such business shall be coded and statistically reported to CAR as emanating from the originating producer. If an ERP engages in brokering prohibited under this section, its Servicing Carrier shall issue a thirty-day notice of termination of the ERP's appointment.

C. Exclusive Representative Producer Responsibilities – Garaging Town Servicing Carrier Assignments

1. An Exclusive Representative Producer that has an appointment to more than one private passenger Servicing Carrier, as a result of the multiple Servicing Carrier relief process outlined in Rule 13.C.2.(b) will place new and renewal business with the appropriate Servicing Carrier, based on the garaging town of the vehicle(s) on each policy, as follows:
 - a. Stamps, necessary forms and a list of Servicing Carrier garaging town assignments will be maintained in each office location for each Servicing Carrier to which the ERP has been appointed;
 - b. New and renewal business will be placed with the Servicing Carrier based upon the garaging town of the vehicle(s) on each policy;
 - c. For policies insuring multiple vehicles with different garaging towns, the entire policy will be assigned to the appropriate Servicing Carrier based on the garaging town of the first vehicle listed on the policy;
 - d. Policies placed with the incorrect Servicing Carrier will be rewritten immediately and placed with the correct Servicing Carrier retroactive to the original policy effective date;
 - e. For garaging towns that are reassigned to a new Servicing Carrier, the policies will be rewritten with that Servicing Carrier on the policy's next renewal effective date;
 - f. If the policyholder moves to a garaging town that is assigned to a different Servicing Carrier, the policy will be placed with the new Servicing Carrier upon renewal. However, in the case where the policy holder moves within sixty (60) days prior to the scheduled renewal effective date, the policy may be placed with the new Servicing Carrier on the next year's policy renewal date;

- g. If a new book of business or new office location is acquired, that business will be placed with the appropriate Servicing Carrier based on the garaging town of the vehicle(s) on each policy, upon the policy's next renewal effective date.

D. Production Criteria

1. All Exclusive Representative Producers whose applications were submitted and who were appointed on or after January 1, 1992, shall be reviewed annually on the anniversary of each Exclusive Representative Producer's contract date. Those Exclusive Representative Producers who within the first twelve (12) months after their contract date fail to develop a book of business of at least 100 motor vehicles, those Exclusive Representative Producers who within twenty-four (24) months following their contract date fail to develop a book of business of at least 250 motor vehicles, those Exclusive Representative Producers who within thirty-six (36) months following their contract date fail to develop a book of business of at least 400 motor vehicles, and those who subsequently fail to maintain a book of business of at least 400 motor vehicles as of their annual evaluation date, will be terminated, unless the Governing Committee or its designee determines particular circumstances that merit a continuation of the assignment. The Servicing Carrier shall be responsible for providing a copy of the evaluation to the Exclusive Representative Producer and to CAR within fifteen (15) days of the evaluation date. The effective date of termination shall be one year after the evaluation date on which the Exclusive Representative Producer failed to develop or maintain the applicable minimum book of business. If during the twelve (12) month phase out period the Exclusive Representative Producer obtains and maintains the applicable minimum book of business, the termination process shall be suspended but the Exclusive Representative Producer shall continue to be subject to annual evaluations.

2. Annual evaluations of Exclusive Representative Producers whose appointments were effective prior to January 1, 1992, shall commence on and after January 1, 1992. Those Exclusive Representative Producers who fail to develop or maintain a book of business of at least 100 motor vehicles as of the latter of January 1, 1992, or the first anniversary of their appointment, and those Exclusive Representative Producers who fail to develop or maintain a book of business of at least 250 motor vehicles as of the latter of January 1, 1993 or the third anniversary of their appointment and as of each subsequent annual evaluation will be terminated unless the Governing Committee or its designee determines particular circumstances that merit a continuation of the assignment, pursuant to the terms and notification provisions set forth in Paragraph 1 above.
3. Beginning with evaluations occurring on January 1, 2006 and thereafter, Exclusive Representative Producers appointed for commercial motor vehicle business, who within the first twelve (12) months after their appointment date fail to develop a minimum book of business of \$10,000 in commercial motor vehicle written premium, those who within twenty-four (24) months after their appointment date fail to develop a minimum book of business of \$20,000 in commercial motor vehicle written premium, those who within thirty-six (36) months after their appointment date fail to develop a book of business of \$30,000 in commercial motor vehicle written premium, and those who subsequently fail to maintain a book of business of at least \$30,000 in commercial motor vehicle written premium as of their evaluation date, will be terminated for commercial motor vehicle business.
4. An Exclusive Representative Producer terminated under the provisions of this section shall be ineligible for appointment to a Servicing Carrier for a period of two (2) years commencing on the effective date of the termination.

For purposes of this paragraph, the term Exclusive Representative Producer includes any licensed producer and any other newly emerging producer with whom or which the terminated Exclusive Representative Producer has a direct or indirect material and continuing proprietary or management interest.

E. Market Need Criteria

1. Beginning January 1, 1990, CAR shall review the appointment of all Exclusive Representative Producers in order to determine whether there is a market need to be served by the Exclusive Representative Producer. CAR shall conduct such a review of each Exclusive Representative Producer as of the third anniversary of the producer's contract and at least once within each succeeding three year period.

Each Exclusive Representative Producer who does not meet the market need requirement shall be so notified by CAR within forty-five (45) days of the determination. If CAR finds that the Exclusive Representative Producer has: (a) been offered and has refused a voluntary contract to write motor vehicle business of the type covered by its Exclusive Representative Producer appointment with a company that is a Servicing Carrier; or (b) has not made a substantial effort to obtain such a voluntary contract with a Servicing Carrier, that Exclusive Representative Producer appointment shall terminate three years from the date of notification of CAR's finding. For each year during the three year time period, that Exclusive Representative Producer shall receive a dollar commission which is minus ten (10) percent of the dollar commission established by the Commissioner in his annual opinion, findings and decision on automobile insurance rates. Prior to any adjustment in commission paid to an Exclusive Representative Producer pursuant to this section, both CAR and the Servicing Carrier shall notify the affected Exclusive Representative Producer in writing of the commission adjustment.

2. The notification shall advise the Exclusive Representative Producer of the right to a hearing as provided in Rule 20. The Exclusive Representative Producer shall be given an opportunity to demonstrate to CAR that he/she is satisfying a market need based on criteria established by CAR or that he/she has been unable to obtain a voluntary contract to write motor vehicle business of the type covered by its Exclusive Representative Producer appointment during the twelve (12) months immediately preceding the date of notification.

3. If at any time during the three year period referred to in 1 above, the Exclusive Representative Producer satisfies the Governing Committee that he or she has made a substantial effort to obtain such a voluntary contract, such Exclusive Representative Producer shall be entitled, as of the date of the Governing Committee's finding, to full commissions as provided for in Rule 18. and to all other rights conferred by the Rules of Operation.

F. Change of Assignment

1. Changes of assignment of Servicing Carriers, for reasonable business purposes, may be made upon application to and approval by the Governing Committee, provided there is no significant disruption of the marketplace and no unfair or inequitable apportionment of premiums, losses or expenses.

G. Service Fees

1. G.L. c. 175, §182 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, and further prohibits said producers from charging the insured at a rate different from that fixed, established or approved by the Commissioner. See also G.L. c. 176D. The following acts and practices are prohibited:
 - a. Charging a fee in addition to the premium rate fixed, established or approved by the Commissioner for certifying a registration on behalf of a Servicing Carrier;
 - b. Charging a fee in addition to the premium rate fixed, established or approved by the Commissioner for acting as a producer and placing the insured's motor vehicle insurance business with a Servicing Carrier;

- c. Charging a fee in addition to the premium rate fixed, established or approved by the Commissioner 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 rate fixed, established or approved by the Commissioner 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 of paragraph 1 above is intended to prohibit producers from charging runners' fees and other non-insurance related fees if the following requirements are met;
 - a. The producer provides to the insured 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 insured 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 insured, after having been apprised of the information set forth in G.2.a. and G.2.b. above, 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 insured pursuant to which the producer provides non-insurance related services to the insured if the producer complies with all of the requirements of G.2. above. In the event the producer and insured execute such a "service contract", the producer shall give to the insured an executed copy of the contract and shall retain an executed copy in his or her file which shall be made available to the Servicing Carrier, Division of Insurance and CAR upon request.

H. Appointment Ineligibility

1. Any licensed property and casualty producer who within the preceding twenty-four (24) month period has had an Exclusive Representative Producer assignment rescinded or cancelled by a Servicing Carrier with the said rescission or cancellation not having been reversed by the Governing Committee, the Division of Insurance, or court of competent jurisdiction shall be ineligible for an appointment to represent a Servicing Carrier as an Exclusive Representative Producer.

Any licensed property and casualty producer whose Exclusive Representative Producer assignment rescission or cancellation has not been reversed pursuant to the preceding paragraph and who, after a hearing by the Governing Committee or its designee, has been found to have committed a subsequent material and substantial breach of a contract with a Servicing Carrier, said finding not having been reversed by the Division of Insurance or a court of competent jurisdiction, shall be ineligible for an appointment to represent a Servicing Carrier as an Exclusive Representative Producer.

A material and substantial breach of contract will be deemed to have occurred where a finding has been made that the Exclusive Representative Producer has on three distinct occasions committed any of the following acts or omissions or on any one occasion has committed a combination of any three or more of the following acts or omissions:

- a. Failure to remit payments to a Servicing Carrier on a timely basis in accordance with CAR Rules of Operation and those prescribed by the Servicing Carrier.
- b. Failure to forward to any insured within thirty (30) days of receipt from the Servicing Carrier policies and endorsements (if not mailed directly by the Servicing Carrier).
- c. Failure to notify the Servicing Carrier of any suspected fraud, known to the Exclusive Representative Producer surrounding a loss.

- d. Failure to assist the Servicing Carrier during any audit or investigation of the motor vehicle business of the Exclusive Representative Producer.
 - e. Failure to report to the Servicing Carrier all coverages bound, all registrations/titles certified within two working days after binding coverage or certifying a registration.
 - f. Failure to comply with reasonable procedures as supplied by the Servicing Carrier for processing claims.
2. If a voluntary agent has been terminated by his or her voluntary Servicing Carrier as a consequence of any of the above acts or omissions, that former voluntary agent will be ineligible for appointment as an Exclusive Representative Producer for a period of two (2) years commencing on the effective date of the termination.
 3. An Exclusive Representative Producer terminated for failure to meet minimum production criteria as provided in Rule 14.D. or to meet market need criteria as provided in Rule 14.E. shall be ineligible for appointment to represent a Servicing Carrier as an Exclusive Representative Producer for a period of two (2) years commencing on the effective date of the termination.
 4. For purposes of this section, the term Exclusive Representative Producer includes any licensed producer and any other newly emerging producer with whom or which the terminated Exclusive Representative Producer has a direct or indirect material and continuing proprietary or management interest.
 5. If the certification of a MAIP Assigned Risk Producer has been revoked by CAR for violations of any obligation(s) delineated in Rule 31, with said revocation not having been reversed by the Governing Committee, the Division of Insurance, or court of competent jurisdiction, the producer is ineligible for the appointment or continuation of its residual market appointment. The producer shall be ineligible to reapply for appointment as an Exclusive Representative Producer until such time as the producer is eligible to reapply for certification as an Assigned Risk Producer.

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.

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, 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, 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. The APR must return uncontested unearned commission within 45 calendar days from the date the producer receives notice from the insurer that such commission is due.

C. 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.

D. 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. 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.

3. If an Exclusive Representative Producer's (ERP) appointment has been terminated by his Servicing Carrier for violations of any obligation(s) delineated in Rule 14, with the exception of Section D. Production Criteria, with said termination not having been reversed by the Governing Committee, the Division of Insurance, or court of competent jurisdiction, the ERP is ineligible for certification or continuation of its residual market certification. The ERP shall be ineligible to reapply for certification as an Assigned Risk Producer until such time as the producer is eligible to reapply for appointment as an Exclusive Representative Producer.