



DANIEL R. JUDSON
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September 17, 2014

BULLETIN NO. 990

PROPOSED CHANGES TO RULES OF OPERATION

At its meeting of September 17, 2014, the Governing Committee voted to amend the following Rules of Operation by deleting and adding the language as indicated on the attached copies. A copy of the Filing Letter, which contains an explanation of the Rule changes, is attached for your information.

The impacted Rules are listed below.

- Rule 1 – General Provisions
- Rule 2 – Definitions
- Rule 3 – Obligations of Members
- Rule 3A – Obligations of Inactive Members
- Rule 4 – Governing Committee
- Rule 5 – Commonwealth Automobile Reinsurers Officers
- Rule 6 – Coverages
- Rule 7 – Experience Rating All Other Motor Vehicles/Private Passenger Motor Vehicles
- Rule 8 – Statistical Data
- Rule 9 – Audit Review
- Rule 10 – Claim Practices
- Rule 11 – Assessments and Participation
- Rule 12 – Credits
- Rule 13 – Servicing Carrier Requirements
- Rule 14 – Representative Producer and Exclusive Representative Producer Requirements
- Rule 15 – Premium Collection Standards
- Rule 16 – Terminations
- Rule 17 – Expense Allowances to Servicing Carriers
- Rule 18 – Commissions
- Rule 19 – Indemnification
- Rule 20 – Hearings, Review
- Rule 30 – Assigned Risk Company Requirements
- Rule 31 – Assigned Risk Producer Requirements
- Rule 40 – Hearings, Review

As required in Article X of the Plan of Operation, this Bulletin, with a copy of the proposed changes to the Rules listed above, is being furnished to every Member. Any Member 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.

DANIEL R. JUDSON
President

Attachment



DANIEL R. JUDSON
PRESIDENT

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www.commauto.com 617-338-4000

September 17, 2014

Honorable Joseph G. Murphy
Commissioner of Insurance
Massachusetts Division of Insurance
1000 Washington Street, Suite 810
Boston, MA 02118

Proposed Changes to the Rules of Operation

Dear Commissioner Murphy:

In accordance with the provisions of Article X of the Plan of Operation, I hereby file, at the request of the Governing Committee, amendments to the following Rules of Operation:

- Rule 1 – General Provisions**
- Rule 2 – Definitions**
- Rule 3 – Obligations of Members**
- Rule 3A – Obligations of Inactive Members**
- Rule 4 – Governing Committee**
- Rule 5 – Commonwealth Automobile Reinsurers Officers**
- Rule 6 – Coverages**
- Rule 7 – Experience Rating All Other Motor Vehicles/Private Passenger Motor Vehicles**
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- Rule 17 – Expense Allowances to Servicing Carriers**
- Rule 18 – Commissions**
- Rule 19 – Indemnification**
- Rule 20 – Hearings, Review**
- Rule 30 – Assigned Risk Company Requirements**
- Rule 31 – Assigned Risk Producer Requirements**
- Rule 40 – Hearings, Review**

Changes to each of these Rules are shown by deleting and adding the language as reflected on the attached copy. The remainder of these Rules is unchanged.

Explanation

The Ad Hoc Procedures Review Subcommittee met on April 17, 2014, May 20, 2014 and June 26, 2014 to discuss potential Rule modifications as may be appropriate to establish standard practices with respect to reviews at CAR, and to clarify Servicing Carrier and Exclusive Representative Producer responsibilities, especially as relating to producer terminations. The Subcommittee recommended to the Governing Committee modifications to Rules 13-16, 30, 31 and 40.

The Commercial Automobile Committee met on May 29, 2013 and September 8, 2014 to update Rules 1-20 to apply exclusively to commercial residual market operations by eliminating all references to the private passenger market. Additionally, general modifications have been made to Rules 1-20 to update Rule language to assure that it incorporates current practices of the Commercial Servicing Carrier programs; update formatting for consistency with Rules 21-40; update references throughout the Rules; add or modify wording, as necessary, to clarify Rule language; eliminate obsolete language; and add headings, as necessary, to provide organization and clarity within the applicable Rule. The Committee recommended to the Governing Committee modifications to Rules 1-20.

At its meeting of September 17, 2014, the Governing Committee approved modifications to Rules 1-20, 30, 31 and 40 of the Rules of Operation, as proposed by the Ad Hoc Procedures Review Subcommittee and the Commercial Automobile Committee as noted below.

Rule 1 – General Provisions

This Rule has been updated to reflect that the provisions of Rules 1-20 of the Rules of Operation apply to ceded commercial business and Rules 21-40 of the Rules of Operation apply to private passenger business assigned through the MAIP.

Rule 2 – Definitions

Definitions and wording applicable to private passenger business have been eliminated from this Rule.

Rule 3 – Insurer Obligations

Language applicable to a Member's private passenger obligations has been eliminated from this Rule. The title of the Rule has been updated to more accurately reflect that both Member and Inactive Member obligations (as previously contained in Rule 3A) are specified in the Rule.

Rule 3A – Obligations of Inactive Members

The language included in this Rule has been incorporated into Rule 3 – Insurer Obligations.

Rule 4 – Governing Committee

Rule 5 – Commonwealth Automobile Reinsurance Officers

Each of these Rules has been updated for minor wording modifications.

Rule 6 – Coverages

References to coverages applicable to private passenger vehicles have been eliminated from this Rule and the coverages applicable to commercial vehicles have been reorganized for clarity.

Rule 7 – Experience Rating

Rule 8 – Statistical Data

Rule 9 – Audit Review

Each of these Rules has been updated for minor wording modifications.

Rule 10 – Claim Practices

This Rule has been updated for minor wording modifications. A Servicing Carrier's responsibility to offer claim and fraud training to its producers has been relocated to Rule 13.

Rule 11 – Assessments and Participation

Language pertaining to the calculation of private passenger participation ratios has been eliminated from this Rule. Language relative to companies electing to withdraw from the private passenger automobile insurance market has been eliminated. Obsolete commercial language from older policy years has been eliminated. Minor modifications have been made to this Rule to clarify current participation and assessment practices.

Rule 12 – Credit Provisions

The entire Rule, which pertains to territory and classification credits for the former private passenger pooling mechanism has been eliminated and will be reserved for future use.

Rule 13 – Servicing Carrier Requirements

Servicing Carrier requirements and obligations relative to private passenger appointments and responsibilities as well as ERP subscription methodology and relief language have been eliminated from this Rule. This Rule has also been substantially reorganized to clarify Servicing Carrier responsibilities and to more clearly address the termination of ERP contracts. Language has been added to identify the grounds under which a Servicing Carrier can issue a termination notice to an ERP and the requirement for a Servicing Carrier to define any changes in operational procedures upon issuance of a termination notice.

Rule 14 – Exclusive Representative Producer Requirements

Language relative to producer appointments, requirements and obligations pertaining to private passenger business has been eliminated from this Rule. Commercial Exclusive Representative Producer requirements and production criteria responsibilities have been clarified and obsolete language has been eliminated. This Rule has been reorganized to clearly identify an ERP's initial and ongoing responsibilities and the specific violations that are grounds for termination. Language has been modified to specify that the requirement for an ARP to submit premium payments received to a Servicing Carrier on a "timely basis" means within two business days. The Appointment Ineligibility section has also been modified to state that if an ARP's certification has been revoked by CAR for violations of any obligations specified in Rule 31, the producer becomes ineligible for appointment as an ERP once the producer has exhausted its appeal rights pursuant to Rule 40. A new section, Review/Relief of ERP Termination has been added, providing for a stay of the termination upon receipt of a Request for Review/Relief form, subject to the best interests of the motoring public.

Rule 15 – Premium Collection Standards

This Rule has been updated for minor wording modifications and to reflect current premium collection standards.

Rule 16 – Terminations

Private passenger references have been eliminated and the Rule has been updated for minor wording modifications.

Rule 17 – Expense Allowance to Servicing Carriers

Language pertaining to private passenger ceding expense allowances has been eliminated from this Rule. Obsolete language pertaining to commercial ceding expense allowances for older calendar years and references to the cession limitation have been eliminated. Minor modifications have been made to this Rule to reflect current expense allowance practices as approved through the Request for Proposal bid process.

Rule 18 – Commissions

Language relative to commissions paid on private passenger business has been eliminated and the Rule has been updated for minor wording modifications.

Rule 19 – Indemnification

This Rule has been updated for minor wording modifications.

Rule 20 – Review and Appeal

This Rule has been updated for minor wording modifications and to clarify that any written materials that a party wishes to have considered by the reviewing committee be forwarded to CAR at least five business days before the scheduled meeting, mirroring the language contained in the Request for Review/Relief form. The title of the Rule has been updated to more accurately reflect Rule content and practice.

Rule 30 – Assigned Risk Company Requirements

Rule language relative to an ARC's responsibility to monitor and notify CAR of specific ARP infractions has been updated to specify that an ARP's failure to forward premium payments to an ARC on a "timely basis" means within two business days.

Rule 31 – Assigned Risk Producer Requirements

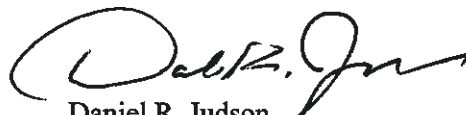
This Rule has been updated to specify that an ARP's requirement to submit premium payments received to an ARC on a "timely basis" means within two business days. Language relative to the decertification of an Assigned Risk Producer following the termination of an ERP appointment for violation of Rule 14 has been added to this Rule.

Rule 40 – Review and Appeal

This Rule has been updated for minor wording modifications. The title of the Rule has been updated to more accurately reflect Rule content and practice.

A copy of the proposed amendments to Rule 1-20, 30, 31 and 40 of the Rules of Operation is attached, 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,



Daniel R. Judson
President

Attachments: Rules 1-20, 30, 31 and 40

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

The Rules of Operation are adopted in accordance with ~~the CAR's~~ Plan of Operation in order to carry out the provisions of the Plan ~~of Operation, and shall apply to all Motor Vehicle Insurance policies issued to be effective on and after January 1, 1984.~~

Rules 1 through 20 shall apply to Eligible Risks as defined in Rule 2 which are ceded to CAR and are unable to obtain commercial Motor Vehicle Insurance through the voluntary market.

Rules 21 through 40 shall apply to Eligible Risks as defined in Rule 22 which are assigned through the MAIP and are unable to obtain private passenger Motor Vehicle Insurance through the voluntary market.

When used in ~~the Rules 1 through 20, and the Plan of Operation,~~ the following ~~words terms~~ shall have the stated meanings:

CAR means Commonwealth Automobile Reinsurers.

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

COMMERCIAL MOTOR VEHICLE means any insurable motor vehicle not included in the definition of Private Passenger Motor Vehicle contained in Rule 22.

COMMISSIONER means the Commissioner of Insurance of Massachusetts.

ELIGIBLE RISK means

~~1. Private Passenger~~ any pPerson who qualifies for a Motor Vehicle Insurance policy pursuant to G.L. c. 175, § 113H; and

~~2. Commercial~~ ~~any person~~ which has its pPrincipal pPlace of ~~b~~Business within the Commonwealth of Massachusetts and which is required by a financial responsibility law as enacted by the legislature of any state or of the United States or by any valid regulation of the Interstate Commerce Commission, United States Department of Transportation, or the Massachusetts Department of Public Utilities to maintain Motor Vehicle Insurance with respect to vehicles owned or leased by it, and registered within or outside of the Commonwealth of Massachusetts. Ordinances or Bylaws, as enacted by any political subdivision of any state, shall not for the purposes of determining eligibility be considered as financial responsibility laws.

~~With respect to both 1. and 2., physical damage coverage is eligible for cession to CAR only when written in conjunction with statutory coverage for the same vehicle.~~

~~With respect to both 1. and 2.,~~ pPursuant to G.L. c. 175, § 113U, a Person seeking to insure Antique Vehicles does not qualify as an Eligible Risk.

EXCLUSIVE REPRESENTATIVE PRODUCER (ERP) means

~~1. Private Passenger— a pPerson licensed as a property and casualty insurance producer pursuant to G.L. c. 175, § 162H through § 162X inclusive, who (a) has a place of business (i) in Massachusetts or (ii) in any state contiguous to Massachusetts, and who does not have any existing voluntary agency relationship with a Servicing Carrier of CAR for Motor Vehicle Insurance, and who (b) has been appointed by the Governing Committee or its designee to a Servicing Carrier to immediately certify commercial Motor Vehicle Insurance policies.~~

~~Non-resident licensed producers with a place of business in any state contiguous to Massachusetts may apply to CAR for appointment as an ERP.~~

~~2. Commercial— a person satisfying 1. or, a person who has an existing voluntary relationship(s) with a Member Company(s) of CAR for Commercial Motor Vehicle Insurance business, and who has also been appointed by the Governing Committee or its designee to a Servicing Carrier for purposes of writing commercial ceded business.~~

~~—Non-resident licensed producers with a place of business in any state contiguous to Massachusetts may apply to CAR for appointment as an ERP.~~

INACTIVE MEMBER, ~~pursuant to CAR Rule 3A, is~~ means any iInsurer which is licensed to write Motor Vehicle Insurance policies or bonds in Massachusetts, but ~~which (a) did not, in fact, issue any commercial Motor Vehicle Insurance policies or bonds in Massachusetts during the most recent calendar year, and which (b) is not the issuing company on any outstanding commercial Massachusetts Motor Vehicle Insurance policies or bonds, and (c) has no outstanding obligations pursuant to Rule 11.~~

INSURER means any corporation, association, partnership or individual licensed to write Motor Vehicle Insurance in Massachusetts.

~~**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 on each Member's Quota Share pursuant to Rule 22.~~

MANUAL OF ADMINISTRATIVE PROCEDURES (MAP) means the Manual of Administrative Procedures of CAR and does not include the Assigned Risk Company Procedures Manual or the Assigned Risk Producer Procedures Manual.

~~**MARKET NEED** for the appointment of ERPs for Private Passenger Motor Vehicle business means those territories where the current rate subsidy averages 10% or more.~~

MEMBER means any insurer which is licensed to write Motor Vehicle Insurance liability policies or bonds in Massachusetts and which ~~does is~~ not an qualify for Inactive Membership ~~status~~. Groups of companies under the same ownership and management will be treated as a single Member. Groups of companies under either the same ownership or management, but not both, may elect to be treated either separately or as a single Member.

MOTOR VEHICLE INSURANCE means direct insurance against injury or damage, including the legal liability therefore, 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.

~~**NEWLY EMERGING COMPANY** means a company duly licensed by the Commonwealth of Massachusetts for the purpose of insuring against physical damage and liability arising from the ownership of motor vehicle(s); which company, at the time of its licensure to write physical damage or liability coverage in the Commonwealth of Massachusetts has neither: previously written both physical damage and liability coverage for private passenger and commercial classifications in the Commonwealth of Massachusetts, nor assumed the assets and/or liabilities of another insurer writing Motor Vehicle Insurance in the Commonwealth of Massachusetts, and is not, at any time, a part of, or controlled by, any insurer or group of insurers which has previously written physical damage or liability insurance in the United States or in Canada.~~

~~This definition shall apply to companies becoming Members of CAR subsequent to the effective date of the Rule change, as approved by the Commissioner of Insurance.~~

~~NEWLY WRITING COMPANY~~ means any Member which does not qualify as a Newly Emerging Company and which did not write physical damage and/or liability coverage for Private Passenger and/or Commercial Motor Vehicles in the Commonwealth of Massachusetts in 1982.

PERSON means a every natural person, firm, co-partnership, association, corporation, government or agency thereof.

PLAN OF OPERATION or **PLAN** means the Plan of Operation of CAR prepared pursuant to G.L. c. 175, §113H.

PRINCIPAL PLACE OF BUSINESS, as it applies to the definition of an Eligible Risk, is defined as the chief or usual place of business. It is the head office; the place where the principal officers generally transact business and the place to which reports are made and from which orders emanate. It is also the place where the corporate functions are performed. It is where executive offices are located and corporate decisions are made.

The burden of proof with regard to the location of the ~~p~~Principal ~~p~~Place of ~~b~~Business, consistent with the definition as stated above, lies with the applicant who seeks to qualify as an Eligible Risk.

~~PRIVATE PASSENGER MOTOR VEHICLE~~ means those vehicles as defined in the Massachusetts Private Passenger Automobile Insurance Manual published by the Automobile Insurers Bureau of Massachusetts.

~~REPRESENTATIVE PRODUCER~~ means a person licensed as a fire or casualty insurance producers pursuant to G.L. c. 175, § 162H through § 162X, inclusive, who has a place of business in Massachusetts and who has been appointed by the Governing Committee, or its designee, to a Servicing Carrier to immediately certify Private Passenger Motor Vehicle Insurance policies and who has executed a contract with the Servicing Carrier. A non-resident licensed agent authorized by a Servicing Carrier to certify Massachusetts Private Passenger Motor Vehicle policies may apply to the Governing Committee for appointment as a Representative Producer of such Servicing Carrier, provided all requirements of Rule 14 have been satisfied.

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

SERVICING CARRIER means a Member which has been appointed by the Governing Committee, or its designee, as authorized in pursuant to the Plan and Rules of Operation to issue Motor Vehicle Insurance ~~P~~olicies at the request of ~~a Representative Producer or~~ an Exclusive Representative Producer. ~~Where a company within a group under the same management cedes exclusively private passenger type Motor Vehicle Insurance and another company within that same group cedes exclusively Commercial Motor Vehicle Insurance, those companies shall be considered as one Servicing Carrier for purposes of this definition.~~

A. Member Obligations

1. Every Member shall be bound by the Plan ~~of Operation~~ and ~~all Rules of Operation adopted pursuant to it~~.

2. Financial Obligations

~~B.1.~~ a. Each Member agrees to pay assessments levied against it for losses or expenses or any combination thereof incurred under policies issued through CAR by a Servicing Carrier; to pay assessments levied against it for the operating expenses of CAR; to pay penalties levied against it ~~under~~ pursuant to the Rules adopted by the Governing Committee; and to accurately submit ~~in a timely and accurate fashion~~ all statistics, records and accountings required by CAR in a timely manner.

~~2.~~ b. Each Member, in recognition of the absolute necessity for timely payments of balances owed CAR ~~in order for the Plan to remain solvent as respects balances due to Members from CAR~~, 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 CAR for all damages and expenses incurred by CAR as a result of the failure of any Member to pay any balance owed CAR pursuant to Rule 3 or 11, ~~which that balance~~ remains unpaid as of the 10th calendar day following the invoice due date, written notice of the default having been mailed by certified mail to the company by CAR on or after the first business day following the invoice due date. ~~Damages and expenses as~~ used herein, “damages and expenses” shall include but not be limited to CAR'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 non-payment, the cost of all staff time spent in connection with ~~staff~~ efforts to collect the balance outstanding, all financial losses resulting from non-payment and all other related expenses and losses ~~relating thereto~~.

~~3.~~ 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 CAR 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 CAR to the Member's account. Before exercising any other right of appeal provided pursuant to G.L. c. 175, § 113H ~~and/or~~ the Plan or Rules of Operation ~~of CAR~~, the Member shall pay all amounts owed to CAR.

d. With respect to Members which have failed to pay assessments, late payment fees or compensatory damages or expenses within 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 non-payment for its consideration and, ~~if it~~ any action it deems appropriate, ~~action.~~

~~C.~~ 3. 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 ~~hereunder~~.

~~In the event a Member effects a transfer which results solely in the transfer of its obligations for issuing Massachusetts Private Passenger Motor Vehicle Insurance policies or bonds to another Member for subsequent policy years, then upon said transfer the transferring Member shall be relieved of any future obligations which would have otherwise arisen as a consequence of the business transferred. Beginning with the policy year in which the transfer takes place, the participation obligations of the Member receiving the transfer shall be determined pursuant to Rule 11.B.1., provided however that the pre-credit "1989 PR" ratio, the minimum allowable exposures pursuant to Rule 11.B.1.b.(2), and the lagged voluntary agent market share pursuant to Rule 11.B.1.b.(3), of the transferring Member shall be added to the corresponding ratio, exposures, and market share of the Member receiving the transfer. For the five policy years subsequent to the year in which such a transfer of obligations is made, only 15% of the Private Passenger Motor Vehicle Insurance policies or bonds transferred shall be eligible for cession to CAR. If the transfer of coverages described herein involves a transfer of Exclusive~~

~~Representative Producers (ERPs) which will either cause or increase ERP oversubscription for the Member to which the coverages have been transferred, then the number of ERPs of the transferring Member~~

~~that either causes or increases the oversubscription shall be reassigned to other Member Companies in accordance with CAR's then approved procedure for such reassignment.~~

~~Voluntary agents, Representative Producers or ERPs who, as of the effective date of transfer, had been authorized to bind Massachusetts Private Passenger Motor Vehicle Insurance coverages with the transferring Member shall not be subject to contract modification or cancellation of the authority to bind such coverages by the Member to which said obligations have been transferred for a period of five years following said transfer; provided however, that nothing set forth herein shall prohibit the cancellation of an ERP pursuant to Rule 14 subject to approval by CAR and, where applicable, the Commissioner; and provided further that a Representative Producer may be canceled for causes approved by the Commissioner.~~

~~4D.~~ A Member may terminate its membership in CAR ~~as of the close of CAR's fiscal year~~ 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 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 Rule 11, ~~and the Member shall be charged or credited in due course with its proper share of all premium, losses and expenses allocable to it under the Rules of Operation.~~

~~5E.~~ If any Member is declared insolvent by a court of competent jurisdiction, its membership in CAR shall terminate as of the date it is declared insolvent, but it shall be liable to CAR for all obligations incurred under the Plan or the Rules prior to the date it is declared insolvent. CAR shall compute the amount of such obligations in accordance with the Rules and shall be entitled to offset any liabilities of the Member to CAR against any liabilities of CAR to the Member.

Any unsatisfied net liability of an insolvent Member shall be assumed by and apportioned among the remaining Members of CAR in the same manner in which underwriting results are apportioned by CAR. CAR shall have all rights allowed by law on behalf of the remaining Members against the estate or funds of such insolvent Member for sums due CAR.

~~6F.~~ No judgment against CAR shall create any direct liability against the individual Members.

B. Meetings

- 1G.** There shall be an Annual Meeting of the Members of CAR, which shall be held within 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.
- 2H.** Special Meetings of the Members of CAR shall be called at any time by the Governing Committee upon the written request of eight members of the Governing Committee.
- 3I.** Written notice of any ~~such~~ Annual or Special ~~m~~Meeting of the Members of CAR shall be mailed to each Member at least 10 days before the date fixed for such meeting stating the purpose of the meeting.
- 4J.** Minutes of all ~~such~~ Annual and Special ~~m~~Meetings of the Members of CAR shall be sent to all Members, the Governing Committee, ~~agent~~ producer associations, and the Commissioner.

C. Inactive Member Obligations

Inactive Members must abide by the Plan and Rules of Operation. An Inactive Member shall receive those CAR distributions 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 CAR Bulletins and will not be assigned reporting numbers. ~~Inactive Members must abide by the Plan and Rules of Operation of CAR. No Member may become an Inactive Member as defined in these Rules until such time as it has fulfilled all obligations pursuant to Rule 11.~~ At such time as an Inactive Member issues a Motor Vehicle Insurance policy or bond in Massachusetts, it must concurrently obtain request that a reporting number ~~be assigned to it~~ and as of that date at that time, it must fully assume the obligations of a Member.

A. **Responsibilities of the Governing Committee**

The Governing Committee shall have responsibility for the administration of CAR, 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 or Rules of Operation.

B. **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 CAR 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. All alternates are subject to the approval of the Commissioner.

C. **Powers**

The Governing Committee shall have the following powers:

1. To select at ~~the~~ its 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, provided except that 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 predecessor. At no time shall the Chairman and Vice-Chairman both be insurer members or both producer members of the Committee. No ~~person~~ individual may serve more than two consecutive terms as Chairman of the Committee. In the event the Chairman is unable to complete his 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 CAR, subject to the approval of the Commissioner, and fix their salaries within the ranges established for each 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 which is consistent with the level of salaries in public sector organizations in Massachusetts.

- ~~2.~~ b. To appoint or employ others as is necessary to carry out the business of CAR;
3. To authorize contracts as necessary to provide space, equipment and services for CAR;
4. To appoint standing or temporary subcommittees in consultation with the Commissioner for purposes of assuring that subcommittees fairly represent the Members ~~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 standing subcommittees.
5. To prepare a Manual of Administrative Procedures which shall contain instructions for the statistical recording and reporting of CAR business; auditing and claim review procedures; and other pertinent information;
6. To levy assessments on the Members as necessary for the operating expenses of CAR;
7. To assess penalties as provided for in the Plan or Rules of Operation or Manual of Administrative Procedures ~~with respect to overdue payment of a Member's share of CAR participation~~;
8. To appoint Servicing Carriers who meet the eligibility requirements within the Rules;
9. To apportion the underwriting results of CAR among the Members and to levy assessments or make such distributions as are appropriate for such apportionment in accordance with the Plan and the Rules of Operation;
10. To distribute an Annual Report and minutes of the Annual Meeting of the Governing Committee to the Commissioner, to Members and to ~~P~~producer ~~R~~representatives serving on any committee;

11. To file manuals of classifications, rules, rates, rating plans and policy forms with the Commissioner, as may be permitted or required by law;
12. To initiate or defend legal actions in the name of CAR on behalf of the Members; and
13. To take any other action it deems necessary or appropriate for efficient and effective operation of CAR consistent with the purpose and intent of CAR.

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 members of the Governing Committee. No meeting shall be held with less than 10 days' notice unless at least eight 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 members, at least two of which are insurer members and two 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 any ~~mMember's company's subscription level~~ or deficit participation, the final text of the motion to be considered will be provided to all members of the Governing Committee, at least 20 calendar days prior to the scheduled Governing Committee action, unless 10 members of the Governing Committee vote to waive the 20 day requirement. The text of the motion, sent to ~~mMembers companies~~, will be accompanied by an explanation. Any such action taken by the Governing Committee will not take effect for 20 calendar days, unless 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 of Insurance pursuant to Rule 20.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 meetings shall be subject to the provisions of G.L. c. 30A, § ~~18 through §25, inclusive~~ ~~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 ~~Section § 21.11A½~~.

The officers of CAR shall include a President, ~~a Vice President Claims, a Vice President Administration, and Auditor~~ and such other officers as the Governing Committee may authorize. The position descriptions 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 CAR 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 CAR, shall receive and carefully keep all monies of CAR, disburse the same only for the business of CAR, 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 CAR 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 CAR as may be directed by the Governing Committee.

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

Policies of an Eligible Risk as defined in Rule 2 and written by a Servicing Carrier shall, upon request, provide coverage for commercial classifications as defined in CAR's Commercial Automobile Insurance Manual as follows:

A. Garage Insurance Coverage

1. Garage coverage may be written by Servicing Carriers with Bodily Injury Liability and Uninsured and Underinsured Motorists limits not to exceed \$1,000,000 per person, \$1,000,000 per accident. Property Damage Liability limits may not exceed \$500,000 for any one accident;
2. Coverage for Other Than Covered Auto Exposure, provided that this coverage is eligible for cession only when written in conjunction with statutory coverages. Endorsement CA 25 36 must be attached to the policy;
3. Automobile Dealers Physical Damage Supplement as defined in the Garage Liability Policy up to a limit not to exceed \$1,000,000 per named location;
4. Garagekeepers' Legal Liability coverage as defined within the endorsement on a legal liability or direct primary basis up to a limit not to exceed \$1,000,000; and
5. Drive-Away-Collision coverage as defined within the endorsement to the Garage Liability Policy.

B. Taxicab Coverage

Taxicab coverage may be written by Servicing Carriers with Bodily Injury Liability and Uninsured and Underinsured Motorists limits not to exceed \$250,000 per person, \$500,000 per accident. Property Damage Liability limits may not exceed \$50,000 for any one accident. Medical Payments limits may not exceed \$5,000 for any one accident.

C. All Other Commercial Motor Vehicle Insurance Coverage

1. Liability

- a. Bodily Injury Liability: Total policy limits of \$1,000,000 each person, \$1,000,000 each accident;

- b. Personal Injury Protection: \$8,000 per person, per accident;
- c. Property Damage Liability: Total policy limits of \$500,000 each accident;
- d. Medical Payments: \$25,000 each person;
- e. Uninsured Motorists: \$500,000 each person, \$500,000 each accident for bodily injury;
- f. Underinsured Motorists: \$500,000 each person, \$500,000 each accident for bodily injury;
- g. Combined Single Limit for Bodily Injury and Property Damage Liability: \$1,000,000 each accident;
- h. Non-Ownership and Hired Car, liability coverage only, may be written by a Servicing Carrier either as a separate policy or in conjunction with a statutory Massachusetts Motor Vehicle Insurance Policy.
- i. Coverages requested by the applicant which are required by any state or federal regulation or financial responsibility law as specified in the definition of Eligible Risk contained in Rule 2.

2. Physical Damage

Physical damage coverage may only be written for an Eligible Risk in conjunction with liability coverage for the same vehicle.

- a. Physical Damage Insurance shall mean: 1) collision coverage or limited collision coverage, 2) fire, theft and combined additional coverage, or 3) comprehensive coverage, as defined in the Massachusetts Motor Vehicle Insurance policy. The Servicing Carrier may refuse to issue collision, fire, theft or comprehensive coverage under the following circumstances:

(1) Comprehensive, fire and theft or collision coverage on a vehicle customarily driven by or owned by an individual convicted within the most recent five-year period of any category of vehicular homicide, auto insurance related fraud or motor vehicle theft;

- (2) Comprehensive, fire and theft or collision coverage on a vehicle customarily driven by or owned by an individual who has, within the most recent five-year period, made an intentional and material misrepresentation in making a claim under such coverages;
 - (3) Collision coverage on a vehicle customarily driven by or owned by an individual who has been involved in four or more accidents in which such person has been deemed to be at fault in excess of 50% within the three years immediately preceding the effective date of the policy;
 - (4) Comprehensive or fire and theft coverage on a vehicle customarily driven by or owned by an individual who has had two or more total theft or fire claims within the three years immediately preceding the effective date of the policy;
 - (5) Comprehensive, fire and theft or collision coverage on a vehicle customarily driven, or owned by an individual convicted one time within the most recent three-year period of any category of driving while under the influence of alcohol or drugs;
 - (6) 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;
 - (7) Comprehensive, fire and theft or collision coverage on a high-theft vehicle which does not have at least a minimum anti-theft or auto recovery device as prescribed by the Commissioner of Insurance. The Commissioner may designate as a high-theft vehicle any 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 prescribe appropriate anti-theft or auto recovery devices for such vehicles;
- b. A Servicing Carrier may waive the deductible amount applicable to a payment under comprehensive coverage for glass damage and be reimbursed when the insured has elected to repair rather than replace damaged glass when permitted by law and where

satisfactory proof of the repair has been presented to the Servicing Carrier;

c. Towing and Labor: \$100.00 per disablement;

d. Substitute Transportation: \$100.00 per day, 30-day maximum.

e. Physical Damage coverage for damage to trailers under a trailer interchange contract may be written by a Servicing Carrier only when written in conjunction with motor vehicle liability coverage.

f. Physical Damage coverage on repossessed motor vehicles shall not be written by a Servicing Carrier.

The term "accident" as used in this Rule shall mean "occurrence" when the coverage is written on such basis.

~~Policies of an Eligible Risk as defined in Rule 2 written by a Servicing Carrier of CAR may provide for Private Passenger Motor Vehicles, and shall upon request provide for Commercial Motor Vehicles, coverage up to the following limits:~~

~~A. Private Passenger~~

~~For Private Passenger Motor Vehicles registered in the Commonwealth of Massachusetts:~~

- ~~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: 1) collision coverage or limited collision coverage, 2) fire and theft coverage, or 3) comprehensive coverage, as those coverages are defined in the Massachusetts Motor Vehicle Insurance Policy. Servicing Carriers must charge the extra risk rate as promulgated by the Commissioner of Insurance or, in the alternative, refuse to issue collision, fire, theft or comprehensive coverage under the following circumstances:~~
 - ~~a. Comprehensive, fire and theft or collision coverage on a vehicle customarily driven by or owned by a person convicted within the most recent five-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 a person who has, within the most recent five-year period, made an intentional and material misrepresentation in making claim under such coverages;~~

~~e. Collision coverage on a vehicle customarily driven by or owned by a person who has been involved in four or more accidents in which such person has been deemed to be at fault in excess of 50% within the three years immediately preceding the effective date of the policy;~~

~~d. Comprehensive or fire and theft coverage on a vehicle customarily driven by or owned by a person who has had two or more total theft or fire claims within the three years immediately preceding the effective date of the policy;~~

~~e. Comprehensive, fire and theft or collision coverage on a vehicle customarily driven, or owned by a person convicted one time within the most recent three-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;~~

~~g. Comprehensive, fire and theft or collision coverage on a high theft vehicle which does not have at least a minimum anti-theft or auto recovery device as prescribed by the Commissioner of Insurance. The Commissioner may designate as a high theft vehicle any 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 prescribe appropriate anti-theft or auto recovery devices for such vehicles;~~

~~8. A Servicing Carrier may waive the deductible amount applicable to a payment under comprehensive coverage for glass damage and be reimbursed therefore, where the insured has elected to repair rather than replace damaged glass when permitted by law and where satisfactory proof of the repair has been presented to the Servicing Carrier;~~

~~9. Towing and Labor: \$100.00 per disablement;~~

~~10. Substitute Transportation: \$100.00 per day, 30-day maximum.~~

~~B. Commercial~~

~~For Commercial Motor Vehicles except those pursuant to Rule 6, Sections C. through I., all coverages eligible to be written for private passenger vehicles pursuant to Section A., subject to the limits specified therein, except that for the following coverages, risks eligible under this subsection shall be subject to the following limits:~~

- ~~1. Bodily Injury Liability: Total policy limits of \$1,000,000 each person, \$1,000,000 each accident;~~
- ~~2. Property Damage Liability: Total policy limits of \$500,000 each accident; or~~
- ~~3. Combined Single Limit for Bodily Injury and Property Damage Liability: \$1,000,000 each accident;~~
- ~~4. Coverages requested by the applicant which are required by any financial responsibility law or State or Federal regulation as defined in Rule 2—Eligible Risk.~~

~~C. Garage Insurance~~

- ~~1. All coverages eligible to be written for Private Passenger Motor Vehicles pursuant to Section B. provided, however, that no garage policy may be ceded without the pollution exclusion endorsement MC 2516 attached to the policy;~~
- ~~2. All coverages required by any financial responsibility law or State or Federal regulation as defined in Rule 2—Eligible Risk;~~
- ~~3. For garage dealer classifications written on a garage policy form, Operation Hazard Coverage and Premises Coverage as filed and approved pursuant to G.L. c. 175A; provided, however, that these coverages are eligible for cession only when written in conjunction with statutory coverages;~~
- ~~4. Automobile Dealers Physical Damage Supplement as defined in the Garage Liability Policy up to a limit not to exceed \$1,000,000 per named location;~~

~~5. Garagekeepers' Legal Liability coverage as defined within the endorsement on a legal liability or direct primary basis up to a limit not to exceed \$1,000,000;~~

~~6. Drive-Away Collision coverage as defined within the endorsement to the Garage Liability Policy as filed and approved under the provisions of G.L. c. 175A.~~

~~D. Taxicab and Public Livery Coverages may be written by Servicing Carriers with Bodily Injury Liability and Uninsured and Underinsured Motorists limits not to exceed \$250,000 per person, \$500,000 per accident. Property Damage Liability limits may not exceed \$50,000 for any one accident.~~

~~E. Policies written on a gross receipts basis may be written by a Servicing Carrier.~~

~~F. Policies written on a composite rated basis may be written by a Servicing Carrier.~~

~~G. Non-Ownership and Hired Car, liability coverage only, may be written by a Servicing Carrier either as a separate policy or in conjunction with a statutory Massachusetts Motor Vehicle Insurance Policy.~~

~~H. Physical Damage coverage for damage to trailers under a trailer interchange contract may be written by a Servicing Carrier only when written in conjunction with motor vehicle liability coverage.~~

~~I. Physical Damage coverage on repossessed motor vehicles shall not be written by a Servicing Carrier.~~

~~The term "accident" as used in the Rule shall mean "occurrence" when the coverage is written on such basis.~~

CAR	Rules of Operation
Rule 7	Experience Rating All Other Motor Vehicles/ Private Passenger Motor Vehicles
Revision Date	1991.09.01
Page	1 of 1

Experience rating must be applied to all qualified policies written by a Servicing Carrier ~~of CAR which qualify~~ in accordance with the eligibility rules contained in the Experience Rating Plan as filed by CAR for both liability and physical damage coverages filed on behalf of CAR, including the Supplementary Rule effective July 1, 1983. The experience rating modification factors shall be determined in accordance with the procedures described in the Experience Rating Plan.

All Members are required to cooperate with ~~CAR~~ Servicing Carriers by providing data needed to determine the experience rating modification factors of an Eligible ~~Risk~~.

Each Member shall furnish or cause to be furnished all statistical data in connection with commercial Motor Vehicle Insurance policies ~~of insurance~~ which may be required by the Commissioner's Statistical Plan Governing Committee, and which is not in conflict with Chapter 365 of the Acts of 1977, ~~including data to be used in conjunction with the Merit Rating and/or the Safe Driver Insurance Plan~~. Each Member agrees to permit the Commissioner's statistical agent ~~for the Massachusetts Division of Insurance~~ to release statistics ~~requested by the~~ to CAR's Governing Committee as are necessary to administer the operation of the ceded commercial market. ~~Statistics shall be furnished at such times and in such form and detail as may be required by the Governing Committee.~~

Commercial Motor Vehicle Automobile Insurance policies written by a Member of CAR ~~or another entity subject to the Plan and Rules of CAR, or its successor entity,~~ shall be subject to a review and audit in a manner and time determined by the Governing Committee. Each Member ~~or entity~~ authorizes CAR ~~or its successor entity~~ to audit any portion of its Commercial Motor Vehicle Insurance business which has a bearing on participation in CAR's underwriting results; expenses; penalties; or any other related matter ~~any credits, penalties, or deficit sharing~~ attributable to such Member. ~~or entity.~~

The Governing Committee shall establish and monitor procedures for the review of claim practices of Servicing Carriers to ~~insure~~ ensure compliance with the Performance Standards for the Handling and Payment of Commercial Claims by Servicing Carriers (Performance Standards). National Association of Insurance Commissioners (NAIC) guidelines are incorporated where applicable into the Performance Standards. CAR will conduct periodic audits of Servicing Carriers' claims including policies ~~reinsured ceded through CAR in the Plan~~ and voluntarily written as specified in G.L. c. 175, § 113H. ~~An error tolerance rate of 10% for procedures and 7% for claims resolution will be implemented and enforced.~~

A. Claim Practices

~~Claim practices of e~~Each Servicing Carrier shall comply with pursuant to the requirements of G.L. c. 175, § 113H relating to claim practices and. ~~Servicing Carriers~~ shall, in accordance with the Performance Standards:

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 Servicing Carrier's 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 residual market 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, Servicing Carriers shall prepare internal reports summarizing the efforts and conclusions of their claim department quality audit. Reports shall consolidate comments relative to both residual market and voluntary claim adjustment.

Report format shall be at the discretion of each Servicing Carrier, or as may be requested from time to time on an individual basis by the Governing Committee, or ~~its~~ ~~their~~ designee;

6. Establish complaint handling procedures, and maintain complete records of all complaints received on claims related to both residual market and voluntary business. Servicing Carriers 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;
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 ~~D~~irect ~~T~~elephone ~~R~~eporting available for first and third-party claims; and

~~11. Servicing Carriers shall offer training on claim reporting and fraud recognition to producers and their customer service representatives. Such training shall be completed for current producers and customer service representatives within six months of approval of this Rule, and for new producers and customer service representatives within six months of licensing or employment.~~

B. Residual Market Claims

~~In the handling of residual market claims,~~ Servicing Carriers 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; ~~or~~
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. **Special Investigative Unit**

Every Servicing Carrier shall maintain a Special Investigative Unit (SIU) to investigate suspicious claims for the express purpose of eliminating fraud and shall specifically report to CAR evidence of fraud pertaining to theft or misappropriation of a commercial motor vehicle on ceded policies ~~issued through CAR~~ as provided in the Manual of Administrative Procedures. Special Investigative Units so established shall be organized and operated to investigate claims on any ceded policies ~~which are issued through CAR~~ and on policies issued on a voluntary basis by Servicing Carriers.

The SIU shall:

1. ~~Investigate~~ 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 ceded policy; ~~and issued through CAR.~~
2. Conduct an audit on a representative sample of policies to verify garaging and policy facts.

D. **Compliance with Commercial Performance Standards**

A benchmark of 80 percent will be used to measure compliance with the Performance Standards. Failure to meet the standards or requirements described in this Rule may prevent reimbursement of loss or expense or may result in ~~such other~~ penalties ~~as may be imposed by the Governing Committee or~~ as directed by the Performance Standards or as may be otherwise imposed by the Governing Committee.

E. **Special Reimbursements**

These procedures apply to claims arising out of ceded commercial Motor Vehicle Insurance policies and for claims arising out of ceded Private Passenger Motor Vehicle Insurance policies (as defined in Rule 22) written prior to July April 1, 2009.

1. Excess Judgments

A Servicing Carrier shall notify CAR, in writing, ~~the Vice President-Claims of CAR~~ of any tort liability judgment; ~~for which the Servicing Carrier may be liable;~~ against an ~~insured of a Servicing Carrier policy~~

Eligible Risk, for which the Servicing Carrier may be liable, if the amount of the judgment exceeds the limit of coverage.⁵ This notification must be received within ~~180 days~~ six months of the entry of judgment. A Servicing Carrier shall also notify CAR, in writing, ~~the Vice President Claims of CAR~~ of any settlement of a claim against a Servicing Carrier policy if the amount of the settlement, for which the Servicing Carrier may be liable, exceeds the limit of coverage.⁵ This notification must be received within ~~180 days~~ six months of the execution of any settlement.

Within one year of the entry of judgment or the execution of settlement prior to any entry of judgment, the Servicing Carrier may apply to CAR for reimbursement of amounts in excess of the limit of coverage, ~~with adequate supporting explanation and documentation, including the complete claim file and complete underwriting file if requested, to the Vice President Claims for reimbursement of such amounts; provided however, that~~ if no final judgment has been entered and the Servicing Carrier has so notified CAR, in writing, ~~the Vice President Claims and has provided notification~~, the request for reimbursement may be filed within ~~180 days~~ six months after the subsequent entry of final judgment or execution of settlement or within one year of the initial notification, whichever occurs later. Adequate supporting explanation and documentation, including the complete claim file and complete underwriting file, if requested, must be provided. ~~The Vice President Claims~~ CAR shall review the request for reimbursement with the Claims Advisory Compliance Audit Committee, ~~and shall refer with~~ its recommendations presented to the Governing Committee for consideration. The Governing Committee may authorize reimbursement of all or any part of the amount requested unless it determines that the Servicing Carrier was negligent in the handling of the claim and its negligence was the proximate cause of the excess judgment or settlement, in which event the request shall be denied.

~~The requirements of this Rule shall apply to all excess judgments entered or excess settlements executed which occur on or after the effective date of the approval of these amendments. For excess judgments entered or excess settlements executed within 179 days prior to the effective date of the approval of these amendments, Servicing Carriers must provide notice and/or a request for reimbursement during the same time periods set forth above, but measured from the effective date of the approval of the amendments.~~

~~For all other requests for reimbursement on judgments or settlements pre-dating this amendment, the excess judgment or settlement must be~~

~~reported promptly. In no event will a request for reimbursement be considered if a delay in reporting, by or within the control of the Servicing Carrier, is prejudicial to CAR or its ability to properly evaluate the request.~~

Failure to comply with any of the requirements set forth in Section E.1. above shall preclude any request for reimbursement in connection with such judgment and/or settlement.

Approved reimbursements shall be submitted as separate loss records.

2. Penalties

The Governing Committee may authorize reimbursements to Servicing Carriers for payments of penalties imposed by Massachusetts Courts pursuant to G.L. c. 90, § 34O and G.L. c. 175, § 113O, and for the payment of legal expenses for the successful defense of actions pursuant to ~~Chapter~~ G.L. c. 93A.

A request for reimbursement of penalties, accompanied by adequate supporting explanation and documentation, shall be sent promptly to ~~the Vice President Claims, who~~ CAR. ~~The request shall be reviewed~~ the request with the Claims Advisory Compliance Audit Committee and ~~thereafter present~~ its recommendations shall be presented to the Governing Committee for consideration.

In cases that do not involve any negligence in the handling of the claim by the Servicing Carrier, ~~which~~ where alleged negligence is the proximate cause of the imposition of the penalty, the Governing Committee may authorize reimbursement of all or part of the amount of penalty.

Approved reimbursements shall be submitted as separate loss records.

3. Notice of Reimbursement

The Governing Committee shall give 30 days' written notice to the Commissioner of its intent to consider any request for reimbursement pursuant to ~~this~~ Section E. of this Rule.

F. Dishonesty

Loss or expense resulting from the dishonesty of those employed by a Servicing Carrier to handle claims shall be the sole responsibility of ~~the~~ such Servicing Carrier.

G. Claim Contingency Procedures

1. Terminations

A Member ~~which terminates its~~ whose designation as a Servicing Carrier is terminated pursuant to Rule 16 shall, ~~pursuant~~ subject to the provisions of Rule 10, service to a conclusion all claims against all policies issued by it in its capacity as a Servicing Carrier 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, ~~other than voluntary~~, of a Member's designation as a Servicing Carrier, ~~the Vice President-Claims~~ CAR 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 10. ~~He shall review his~~ Findings from that examination shall be reviewed with the Claims Advisory Compliance Audit Committee and its recommendations relative to the further servicing of said Servicing Carrier claims shall be presented to the Governing Committee for ~~its~~ consideration. ~~the recommendations of the Claims Advisory Committee for the further servicing of said Servicing Carrier claims.~~

CAR expenses, and the profits and losses on CAR policies, shall be allocated among the Members of CAR in the manner provided under this Rule. Assessments ~~to pay for CAR's expenses and losses on CAR policies~~, shall be levied on a quarterly basis or as frequently as the Governing Committee deems necessary. Such assessments shall be allocated among the Members in accordance with the following principles:

A. Participation – Expenses

Expenses, including all costs of operating CAR 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 ceded to CAR by Servicing Carriers, shall be shared by the Members. Sharing is 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.

Commercial ceded written premium (CAR ID Codes 4 and 5) ~~with policy effective dates of January 1, 2006 and subsequent~~ is excluded from this calculation. Additionally, all premium from classifications and/or coverages that are not statistically reportable to CAR (those classes or coverages not specified in the Massachusetts Statistical Plans) and all premium from Antique Motor Vehicles classification codes ~~0483 and~~ 962000 is excluded from this calculation.

B. Participation – Underwriting Results

~~For the purpose of To~~ establishing a basis for allocation ~~of Servicing Carrier ceded commercial premiums, losses and expenses, allowances~~, each ~~company licensed to write Motor Vehicle Insurance in Massachusetts Member~~ shall report statistical information required by the Rules of Operation to CAR or permit its statistical agencies, designated by the ~~company Member~~ or appointed by the Commissioner, to report all required statistical information to CAR. If the ~~company Member~~ does not exceed CAR's established statistical reporting thresholds and therefore is not required to report statistical data to CAR, CAR will utilize the ~~company's Member's~~ Massachusetts Annual Statement data as a basis for determining underwriting results.

~~In recognition of the need to provide stability in the Massachusetts Motor Vehicle Insurance marketplace,~~ Member participation shall be calculated on an annual basis in accordance with the following procedures:

~~1. Private Passenger Motor Vehicle Participation for Policy Years 1993 and Subsequent.~~

~~For policy years 1993 and subsequent, private passenger participation ratios are calculated using a utilization formula based on the Member Company's voluntary and ceded exposures.~~

~~Exposures from ceded risks meeting the following criteria shall be excluded from the calculation of the utilization ratio, where noted in subsequent paragraphs:~~

Policy Years	Exclusion Criteria
2006-2009	Ceded exposures for risks with SDIP Points 9 and greater and ceded exposures for Inexperienced Operators (0-3 years) — Rate Classes 20, 21, 25, and 26.

~~Additionally, voluntary and ceded exposures for Antique Vehicles with policy effective dates of November 1998 and subsequent shall be excluded from the calculation of the utilization ratio.~~

~~The formula for determining the utilization ratio shall be as follows:~~

- ~~a. For each company, separately for liability and physical damage, determine the company's voluntary written exposures from voluntary agents or direct written (CAR ID Code 0), voluntary written exposures from Exclusive Representative Producers (CAR ID Code 1), voluntary ceded written exposures (CAR ID Code 4), and ceded exposures written through Representative Producers with whom the company has no voluntary relationship, (CAR ID Code 5), for the calendar year corresponding to the policy year whose participation ratios are being calculated.~~

~~Note that if a company has bought out of its Servicing Carrier responsibilities, the exposures serviced on this company's~~

~~behalf by another entity will be counted as if they were written by the buying out company. Note also that voluntary ceded and Exclusive Representative Producer (ERP) ceded exposures meeting the exclusion criteria pursuant to Section B.1. above should be separately identified, to enable their exclusion where specified in subsequent paragraphs.~~

~~For the following Miscellaneous Rated as Private Passenger classifications, the exposures used in the calculation of a company's private passenger liability participation ratio, including Rule 12 credit calculations, will be adjusted by the following factor for the indicated policy year:~~

Policy Years 2006-2009	Classification	Adjustment Factor
0400	Electric Vehicles	.33
0426	Snowmobiles	.33
0483*	Antique Vehicles	.33
0408-0431	Motorcycles	.33
0508-0531		
0608-0631		

~~*Adjustment for Antique Vehicles is only applicable to policies effective prior to November 1998.~~

~~The liability voluntary ceded and ceded ERP exposures with the specified classifications noted above which meet the exclusion criteria pursuant to Section B.1. above should be separately identified, to enable their exclusion where specified in subsequent paragraphs.~~

~~For policy years 2006 through 2009 note that all other Miscellaneous Rated as Private Passenger classifications are included in the liability participation ratio calculations without adjustment.~~

~~For policy years 2006 through 2009 all Miscellaneous Rated as Private Passenger classifications are included in the physical damage participation ratio calculations without adjustment. However, voluntary and ceded exposures for Antique Vehicles with policy effective dates of November 1998 and subsequent are not included in either the liability or physical damage participation ratio calculations.~~

~~b. For each company, separately for liability and physical damage, determine the company's minimum allowable written exposures as:~~

Policy Years	Minimum Allowable Exposures
1992	85% of 1989 voluntary and voluntary-ceded exposures
1993-2008	The greater of: 80% of the previous calendar year voluntary and ceded exposures from voluntary agents or written directly, or 80% of the previous year's minimum allowable exposures

~~For any company which was not a Servicing Carrier for private passenger business during the entire period from January 1, 1989 through December 31, 1989, the number of 1989 voluntary ceded exposures used in the determination of its 1992 minimum allowable written exposures shall equal that company's 1989 voluntary exposures multiplied by 88%.~~

~~For a Newly Emerging Company in 1990, the number of 1989 voluntary exposures used in this calculation for the company's first year of writing shall equal the company's actual voluntary written exposures from all sources in calendar year 1990. For a Newly Emerging Company in 1991 through 1992, the number of 1989 voluntary exposures used in this calculation for the company's first year of writing shall equal the company's actual voluntary written exposures from voluntary agents or written direct, in the corresponding calendar year. For the second and third year of writing of a Newly Emerging Company in 1990 through 1992, the number of 1989 voluntary exposures used in this calculation shall equal the greatest number of voluntary exposures which the company has actually written in any calendar year up to and including the current calendar year.~~

~~Voluntary exposures written through ERPs will be counted in the calendar year 1990 total, but not in the totals for subsequent calendar years. The number of 1989 voluntary ceded exposures shall equal the 1989 voluntary exposures determined above, multiplied by a factor equal to the total industry's voluntary ceded exposures including those meeting the exclusion criteria, divided by the total industry's voluntary exposures for the corresponding calendar year, including ERP voluntary exposures for calendar~~

~~year 1990, but excluding them for subsequent calendar years, then further multiplied by 20% in the first year, 40% in the second year and 60% in the third year.~~

~~For a Newly Writing Company in 1990, the number of 1989 voluntary exposures used in this calculation for the company's first year of writing shall equal the company's actual voluntary written exposures from all sources in calendar year 1990. For a Newly Writing Company in 1991 through 1992, the number of 1989 voluntary exposures used in the calculation for the company's first year of writing shall equal the company's actual voluntary written exposures from voluntary agents or written direct, in the corresponding calendar year. For the second and third year of writing, of a Newly Writing Company in 1990 through 1992, the number of 1989 voluntary exposures used in this calculation shall equal the greatest number of voluntary exposures which the company has actually written in any calendar year up to and including the current calendar year.~~

~~Voluntary exposures written through ERPs will be counted in the calendar year 1990 total, but not in the totals for subsequent calendar years. The number of 1989 voluntary ceded exposures shall equal the 1989 voluntary exposures determined above, multiplied by a factor equal to the total industry's voluntary ceded exposures including those meeting the exclusion criteria, divided by the total industry's voluntary exposures for the corresponding calendar year, including ERP voluntary exposures for calendar year 1990 but excluding them for subsequent calendar years.~~

~~For the purpose of this calculation, a company shall be considered to be a Newly Writing Company in any year in which its written exposures, both voluntary and ceded, from voluntary agents or direct written, exceed 250% of its 1989 written exposures, provided that its 1989 written exposures comprise less than 1% of all exposures written in 1989 and providing that the company has not been defined as Newly Emerging in 1987 through 1992.~~

~~For policy years 2007 and prior, if the company's minimum allowable exposures are greater than the total of the voluntary and voluntary ceded exposures including those meeting the exclusion criteria pursuant to Section B.1.a. above, including voluntary exposures from ERPs for calendar year 1990, but excluding them for subsequent calendar years, then the difference will be added to~~

~~the voluntary ceded exposures excluding those meeting the exclusion criteria pursuant to Section B.1.a. above.~~

~~For policy year 2008, if the company's minimum allowable exposures are greater than the total of its voluntary written exposures from voluntary agents or written directly by the company (CAR ID Code 0), voluntary ceded written exposures (CAR ID Code 4), and MAIP eligible business retained as voluntary (CAR ID Code 8), including those meeting the exclusion criteria pursuant to Section B.1.a. above, then the difference will be added to the voluntary ceded exposures excluding those meeting the exclusion criteria pursuant to Section B.1.a. above.~~

~~If the company's minimum allowable exposures are less than or equal to this total, then the company's voluntary ceded exposures excluding those meeting the exclusion criteria pursuant to Section B.1.a. above will be used.~~

~~Minimum allowable exposures criteria will not be used in calculating a company's participation for policy year 2009.~~

~~e. For each company and for the industry, determine the following:~~

- ~~— Voluntary retained exposures from all sources, pursuant to Section B.1.a. above~~
- ~~— Ceded exposures from all sources, pursuant to Sections B.1.a. and b. above~~

~~Determine each company's pre-credit utilization ratio as:~~

$$\frac{\text{(Company Voluntary Retained Exposures)} + \text{(Company Ceded Exposures} \times \text{K)}}{\text{(Industry Voluntary Retained Exposures)} + \text{(Industry Ceded Exposures} \times \text{K)}}$$

~~In the above formula, for policy years 1993 through 2009, the value of the K factor will be 4.0.~~

~~For subsequent policy years, the value of the K factor will be re-examined based upon existing market conditions.~~

~~d. Determine each company's participation credits based on voluntary business from all sources.~~

~~e. Determine, for each company, adjusted total voluntary written~~

~~exposures by multiplying the total industry voluntary written exposures from all sources pursuant to Section B.1.a. above, by the company's pre-credit utilization ratio pursuant to Section B.1.c. above. Determine each company's final utilization ratio by dividing the company's adjusted total voluntary exposures minus the company's participation credits pursuant to Section B.1.d. above, by the total industry voluntary written exposures pursuant to Section B.1.a. above, minus the total industry participation credits pursuant to Section B.1.d. above.~~

~~f. To the extent that inclusion of any of the final utilization ratios calculated above causes the sum of the final utilization ratios to differ from unity, an off-balance factor shall be applied to each ratio such that the sum becomes unity.~~

~~2. Commercial Motor Vehicles~~

~~a. Commercial Participation Ratio Formula~~

~~(1) Policy Years 2006 and Subsequent~~

~~For policy years 2006 and subsequent, a A company's commercial participation ratios shall be determined as a function of the company's retained market share. Ceded business (CAR ID Codes 4 and 5) shall not be included in the commercial participation formula. Additionally, all retained premium (CAR Identification Codes 0 and 1) for Antique Motor Vehicles (Classification Code 962000) shall be excluded from the calculation of commercial participation ratios.~~

The formula for determining commercial participation ratios shall be as follows:

1.(a) Determine Premium to be Used in Participation Ratio Calculation

(a.i) For each company, separately for liability and physical damage, determine the company's retained written premium to be used in the calculation of commercial participation ratios. Premiums shall be separately summarized for the following CAR ID Codes:

CAR ID Code	Description
0	Voluntary written premium from voluntary producers or written directly by the company
1	Voluntary written premium from producers with whom the company has no voluntary contract

If the sum of a company's retained premium (CAR ID Codes 0 and 1) is less than zero, this premium is excluded from the commercial participation ratio formula.

(b.ii) For the industry, separately for liability and physical damage, determine the total industry retained premium to be used in the calculation of commercial participation ratios. Premium shall be separately summarized for CAR ID Codes 0 and 1 pursuant to Section B. ~~1.a. 2.a.(1)(a)(i) above.~~

~~All retained premium (CAR ID Codes 0 and 1) for Antique Vehicles (Classification Code 9620) shall be excluded from the calculations of commercial participation ratios.~~

(2b) Determine Company's Final Participation Ratio

Determine each company's final participation ratio by dividing the company's retained premium pursuant to Section B. ~~1.a. 2.a.(1)(a)(i) above~~ by the total industry retained premium pursuant to Section B. ~~1.b. 2.a.(1)(a)(ii) above.~~

~~(2) Policy Years 1995 Through 2005~~

~~For policy years 1995 through 2005, a company's commercial participation ratios shall be determined as a function of the company's utilization of the residual market. If the company is not a Servicing Carrier for Commercial Motor Vehicle business, a grossing-up process is performed.~~

~~The formula for determining commercial participation ratios shall be as follows:~~

~~(a) Determine Premium to be Used in Participation Ratio Calculation~~

~~For each company, separately for liability and physical damage, determine the company's written premium to be used in the calculation of commercial participation ratios. Premium shall be separately summarized for the following CAR ID Codes:~~

CAR ID Code	Description
0	Voluntary written premium from voluntary agents or written directly by the company
1	Voluntary written premiums from ERPs with whom the company has no voluntary relationship
4	Ceded written premium from voluntary agents or written directly by the company

~~Note that all ceded premium written through Representative Producers with whom the Servicing Carrier has no voluntary relationship (CAR ID Code 5) is excluded from the calculation of commercial participation ratios.~~

~~Additionally, all premium (CAR ID Codes 0, 1, and 4) for Antique Vehicles (Classification Code 9620) shall be excluded.~~

~~If the sum of a company's voluntary written premium (CAR ID Codes 0 and 1) is less than zero, this premium is excluded from the commercial participation ratio formula.~~

~~Additionally, if the company's ceded written premium (CAR ID Code 4) minus the excluded premium pursuant to Section B.2.a.(2)(b) below is less than zero, this premium is excluded from the commercial participation ratio formula and the company's ceded market share pursuant to Section B.2.a.(2)(d) below will equal zero.~~

~~(b) Identify Commercial Exclusions~~

~~Premium from risks meeting the criteria noted below shall be identified and excluded as necessary from the commercial participation ratio calculations.~~

~~For policy years 2003 through 2005, premium from ceded risks (CAR ID Code 4) meeting the following criteria shall be excluded:~~

Exclusion Criteria		
Classification Description	Policy Years	Statistical Code
<u>Contract Carriers</u> Hauling Chemicals Hauling Petroleum or Petroleum Products All Other	2003-2005	###230 ###270 ###290
<u>Petroleum Business</u>	2003-2005	###920
<u>Long-Haul Truckers</u> Non-Fleet Fleet	2003-2005	##32## ##62##
<u>Emergency Vehicles</u> Emergency Ambulances Fire Department Law Enforcement	2003-2005	791300 790800, 790900 791100, 791200, 794200
<u>School Buses</u>	2003-2005	61###00, 62###00
<u>Buses N.O.C.</u>	2003-2005	53###00, 54###00, 55###00, 58###00
<u>Limousines</u>	2003-2005	42#900
<u>Car Service</u>	2003-2005	43#900
<u>Truckers Cost of Hire</u>	2003-2005	661300
<u>Chemical Manufacturers</u>	2003-2005	###110
<u>Garage</u> Non-franchised Dealers Repair Shops	2003-2005	735100, 735200 780800, 781000, 781100, 781200, 781300
<u>Taxicabs</u> Fleet Non-Fleet	2003-2005	418700, 419700, 410700, 418800, 419800, 410800, 418900, 419900, 410900 415700, 416700, 417700, 415800, 416800, 417800, 415900, 416900, 417900
<u>Van Pools</u>	2004-2005	411###, 412###
<u>Zone Rated Bus</u> Fleet Non-Fleet	2004-2005	520900, 560900 527900, 567900

Exclusion Criteria		
Classification Description	Policy Years	Statistical Code
Specialized Delivery Armored Vehicles	2004-2005	###410
Church Bus	2004-2005	638#00, 639#00, 630#00, 635#00, 636#00, 637#00
Social Services Vehicles Employee Operated All Other	2004-2005	64##### 65#####
Short Term Leasing or Rental Concerns Private Passenger Motor Vehicle Miscellaneous Types	2004-2005	721400 721600
Bobtail Operations	2004-2005	748900
Ambulance Services — Non-Emergency	2004-2005	791400
Driver Training Programs Educational Institutions Commercial Driving Schools	2004-2005	792600 792700

~~(e) Assign a Gross-Up Ceded Premium for Non-Servicing Carriers~~

~~For companies that are not Servicing Carriers for commercial motor vehicle business, a gross-up ceded written premium is assigned. The gross-up ceded premium that is assigned will bear the same relationship to the non-Servicing Carrier's voluntary written premium (CAR ID Codes 0 and 1) that the total of all Servicing Carriers' ceded written premium (CAR ID Code 4) bears to the total of all Servicing Carriers' voluntary written premium (CAR ID Codes 0 and 1).~~

~~(d) Determine Ceded Market Share~~

~~For each company, for policy year 2001 and prior, determine the company's ceded market share after the assignment of a gross-up ceded premium for non-Servicing~~

~~Carriers.—Divide the company's ceded written premium (CAR ID) pursuant to Sections B.2.a.(2)(a) or (c) above by the total industry ceded written premium (CAR ID Code 4) pursuant to Sections B.2.a.(2)(a) and (c) above. Company and industry premium pursuant to Section B.2.a.(2)(b) above is excluded from this calculation.~~

~~(e) Determine Total Market Share~~

~~For each company, for policy year 2001 and prior, determine the company's total market share after the assignment of a gross-up ceded premium for non-Servicing Carriers. Divide the company's total voluntary (CAR ID Codes 0 and 1) and ceded (CAR ID Code 4) written premium pursuant to Sections B.2.a.(2)(a) and (c) above, by the total industry voluntary (CAR ID Codes 0 and 1) and ceded (CAR ID Code 4) written premium pursuant to Sections B.2.a.(2)(a) and (c) above. Company and industry premium pursuant to Section B.2.a.(2)(b) above is excluded from this calculation.~~

~~(f) Determine Utilization Ratio~~

~~For policy year 2001 and prior, determine each company's utilization ratio by combining 50% of the ratio pursuant to Section B.2.a.(2)(d) above and 50% of the ratio pursuant to Section B.2.a.(2)(e) above.~~

~~(g) Determine Adjusted Total Written Premium~~

~~For policy year 2001 and prior, determine each company's adjusted total written premium. Multiply the total industry written premium (after the assignment of a gross-up ceded premium for non-Servicing Carriers) pursuant to Sections B.2.a.(2)(a) and (c) above, by the company's utilization ratio pursuant to Section B.2.a.(2)(f) above. Industry premium pursuant to Section B.2.a.(2)(b) above is excluded from this calculation.~~

~~(h) Determine Company's Final Participation Ratio~~

~~(i) Policy Year 2001 and Prior~~

~~Determine each company's final participation ratio by dividing the company's adjusted total written premium pursuant to Section B.2.a.(2)(g) above by the total industry written premium.~~

~~(ii) Policy Years 2002 through 2004~~

~~For each company and for the industry, determine the following:~~

~~a) Voluntary written premium from all sources (CAR ID Codes 0 and 1) pursuant to Section B.2.a.(2)(a) above.~~

~~b) Ceded written premium (CAR ID Code 4) pursuant to Sections B.2.a.(2)(a) or (c) above, excluding premium pursuant to Section B.2.a.(2)(b) above.~~

~~Using the voluntary and ceded premium identified above, determine each company's final participation ratio as:~~

$$\frac{(\text{Company Voluntary Retained Written Premium}) + (\text{Company Ceded Written Premium} \times K)}{(\text{Industry Voluntary Retained Written Premium}) + (\text{Industry Ceded Written Premium} \times K)}$$

~~In this formula, for policy years 2002 and 2003, the value of the K factor shall be 12.0. For policy years 2004 and 2005 the value of the K factor shall be 11.0.~~

~~3. Companies Electing to Withdraw~~

~~a. Private Passenger~~

~~A company electing to withdraw from the Massachusetts Private Passenger Motor Vehicle Insurance market shall file a plan for an orderly withdrawal over a period which shall not exceed three years and which shall include full settlement of all financial obligations to CAR. Approval of the plan for purposes of this~~

~~section shall mean written approval by the Commissioner of Insurance. Prior to approval, the Commissioner of Insurance shall hold a public hearing if requested to do so by the Governing Committee of CAR, any Member Company of CAR, or any association of producers, to consider the effect of the withdrawal on the orderly and equitable conduct and operation of the Massachusetts Motor Vehicle Insurance market. Any such party seeking a hearing must file a request with the Division of Insurance within 10 days of notice by the Division of Insurance to CAR of the opportunity for a hearing. Copies of the plan shall be made public at the time of such notice.~~

~~On approval of this plan, data for the withdrawing company shall be removed from the calculation of participation ratios for the remainder of the industry beginning in the first year following the year of election to withdraw. The participation ratio of the withdrawing company shall remain constant over the three year period following the year of election to withdraw and shall be applied separately for those three years. The withdrawing company's participation ratio for this period shall be the company's pre-credit utilization ratio pursuant to Section B.1.c. above for the year of election. Upon request of the company electing to withdraw, CAR may, at its option, agree to accept a single payment at any time in settlement of all amounts then outstanding, including those amounts outstanding as a consequence of the calculations specified in this paragraph.~~

~~If the withdrawing company is later found not to have complied with the provisions of the plan as approved by the Commissioner of Insurance, the company's payment pursuant to Section B.3. may be adjusted to assure that the final payment for each year will be no less than the payment which, absent the approval of the withdrawal plan, would have been made pursuant to Section B.1. had no plan been filed and approved.~~

~~b. Commercial~~

~~A Company electing to withdraw from the Massachusetts Commercial Motor Vehicle market but still maintain its license to underwrite other than Motor Vehicle Insurance in Massachusetts shall file a plan for such withdrawal with the Commissioner of Insurance for approval. Such a plan shall specify in detail how its risks are to be placed elsewhere.~~

C. Settlement of Balances

1. CAR will issue quarterly summaries to all Members reflecting their cumulative balances. However, CAR will settle the cumulative balances relating to ~~for~~ the current policy year ~~there will be no reimbursement of Members with allowable credits in excess of written premiums, nor reimbursement of CAR by any of the Members until after~~ following the close of the third quarter of the calendar year, or at a later date if so determined by the Governing Committee.
2. The Governing Committee, subject to the approval of the Commissioner, may offer or allow a Servicing Carrier reimbursement in whole or in part for specific extraordinary expense incurred in qualifying for, continuing as, or ceasing to be, a Servicing Carrier. Such expense must be explained and supported in such detail as required by the Governing Committee, and must be in its judgment significantly in excess of the normal additional expense expected to be incurred by the Servicing Carrier, and must be actually incurred before reimbursement. The Servicing Carrier must petition the Governing Committee for such relief.
3. The Governing Committee, subject to the approval of the Commissioner, may authorize reimbursement of Servicing Carriers for normal insurance business losses incurred in connection with CAR business. Such normal business losses shall be defined and designated by the Governing Committee but shall not include any loss or expense incurred as a result of fraud or dishonesty on the part of a Servicing Carrier's claims personnel including, but not limited to, independent adjusters and agents, and each Servicing Carrier shall hold CAR harmless from and reimburse it for any such loss or expense charged. The Servicing Carrier must petition the Governing Committee for such relief.

~~The credits provided under this Rule are offered to enhance the prospects for a viable voluntary market in all territories and classifications. The credits shall be reviewed annually and any necessary adjustments shall be made.~~

~~Any credit adjustments made under this Rule shall not result in a Member's participation ratio being adjusted below zero.~~

~~Private Passenger Motor Vehicles~~

~~Each Member shall receive credit for voluntarily writing private passenger business within the territories and classifications that would otherwise be disproportionately represented in CAR. This credit is applied to the Member's participation units used to determine its share of CAR's underwriting results pursuant to Rule 11.~~

~~A. Policy Effective Dates April 1, 2007 through March 31, 2008~~

~~For policy effective dates April 1, 2007 through March 31, 2008, for each unit of voluntary retained private passenger business written in credit eligible territories and classifications, participation credits will be given as shown below using approved credit factors and based upon a territory/classification matrix methodology for calculating rate subsidies. Specific credit factors will be determined annually.~~

Credit Factors														
Rate-Class	10	10	10	10	15	17	17	17	17	18	18	18	30	
Statistical Class	10	20 40	22 42	24 26	15 16	10	15 16	22 42	24 26	10 15 16	20 40	24 26	30	
Territory	1	0.0	1.4	5.7	3.1	0.1	0.0	0.0	0.8	0.0	0.2	0.1	0.0	0.0
	2	0.0	1.8	7.1	3.2	0.0	0.0	0.0	1.9	0.0	0.2	0.5	0.0	0.0
	3	0.0	1.8	7.1	2.9	0.0	0.0	0.0	2.0	0.0	0.2	0.4	0.0	0.0
	4	0.0	2.3	7.5	3.2	0.0	0.0	0.0	1.9	0.0	0.6	0.2	0.0	0.0
	5	0.0	3.4	8.0	3.3	0.0	0.4	0.0	1.9	0.0	0.4	0.6	0.0	0.0
	6	0.0	3.9	8.0	3.4	0.1	0.0	0.0	2.3	0.0	1.1	0.7	0.0	0.0
	7	0.0	3.8	7.9	4.0	0.0	0.0	0.0	2.3	0.0	2.3	1.2	0.0	0.0
	8	0.0	4.7	8.0	3.9	0.0	0.0	0.0	2.2	0.0	1.7	1.9	0.0	0.0
	9	0.0	5.0	8.5	4.9	0.0	0.0	0.0	2.7	0.0	4.9	0.2	0.0	0.0
	10	0.0	3.1	9.6	4.9	0.0	0.0	0.0	3.3	0.0	4.5	1.7	0.0	0.0
	11	0.0	3.4	8.4	4.1	0.0	0.0	0.0	3.7	0.0	2.2	2.1	0.0	0.0
	12	0.0	3.2	8.0	3.3	0.0	0.0	0.0	4.0	0.0	1.5	1.5	0.0	0.0
	13	0.0	4.4	8.1	4.3	0.0	0.6	0.0	3.6	0.0	1.3	1.2	0.0	0.0
	14	0.6	6.3	12.4	6.9	0.0	4.0	0.0	7.5	1.7	0.9	1.6	0.0	0.0
	15	1.3	7.3	15.5	8.4	0.0	5.5	0.0	10.1	3.4	1.0	1.9	0.0	0.0
	16	4.2	12.5	20.3	7.9	0.0	7.7	0.0	14.9	5.3	6.7	8.2	0.0	0.0
	17	0.0	6.5	12.3	6.9	0.0	0.1	0.0	8.0	0.0	7.6	0.0	0.0	0.0
	18	5.6	16.6	27.5	17.7	0.0	0.9	0.0	5.3	0.0	0.7	0.5	0.0	0.0
	19	1.8	4.8	22.5	7.8	0.4	3.5	0.0	13.9	0.0	4.7	0.0	2.6	0.0
	20	6.3	19.9	30.6	16.7	0.0	3.0	0.0	14.6	0.0	4.3	2.8	0.0	0.0
	21	8.3	13.9	34.1	21.1	1.5	15.0	3.0	29.1	19.1	5.4	7.7	5.5	0.0
	22	10.5	14.9	31.6	28.5	4.2	15.0	3.1	31.9	18.7	8.2	2.7	3.7	0.0
	23	0.0	1.5	8.7	2.4	2.0	9.2	0.0	6.7	0.0	3.5	0.0	0.0	0.0
	24	0.0	1.5	8.6	2.4	0.0	4.6	0.0	5.8	0.0	0.8	4.9	1.7	0.0
	25	0.4	4.8	12.8	5.7	0.0	5.1	0.0	3.7	6.5	11.0	0.0	0.0	0.0
26	1.6	11.3	20.6	6.4	0.0	6.3	0.0	14.6	5.1	2.9	2.0	0.0	0.0	
27	0.0	2.4	5.2	3.3	0.1	0.0	0.0	1.0	0.0	0.0	0.2	0.0	0.0	
40	0.0	1.5	8.1	2.1	0.0	0.4	0.0	5.0	0.0	0.7	1.3	0.4	0.0	
41	0.0	5.3	8.6	5.2	0.0	2.0	0.0	3.3	0.0	0.8	1.4	0.0	0.0	
42	1.3	7.3	15.5	8.4	0.0	5.5	0.0	10.1	3.4	1.0	1.9	0.0	0.0	
43	1.3	7.3	15.5	8.4	0.0	5.5	0.0	10.1	3.4	1.0	1.9	0.0	0.0	
44	4.2	12.5	20.3	7.9	0.0	7.7	0.0	14.9	5.3	6.7	8.2	0.0	0.0	
45	1.3	7.3	15.5	8.4	0.0	5.5	0.0	10.1	3.4	1.0	1.9	0.0	0.0	

Credit Factors (continued)															
Rate-Class	20	20	20	20	21	21	21	25	25	25	25	26	26	26	
Statistical Class	10	15 16	22	24	10 15 16	20	24	10	15 16	26	42	10 15 16	26	40	
Territory	1	1.3	0.0	13.8	0.7	0.0	6.4	0.5	0.0	0.0	0.0	2.5	0.0	0.0	0.3
	2	0.0	0.0	14.4	2.2	0.0	6.7	2.4	0.0	0.0	0.0	2.6	0.0	0.0	0.0
	3	0.0	0.0	16.0	4.5	0.0	7.0	1.2	0.0	0.0	0.0	2.6	0.0	0.0	0.3
	4	0.0	0.0	15.2	7.6	0.0	8.2	2.4	0.0	0.0	0.0	2.3	0.0	0.0	0.5
	5	0.0	0.0	13.4	7.4	0.0	10.7	3.1	0.0	0.0	0.0	2.9	0.0	0.0	0.8
	6	0.0	0.0	13.6	3.0	0.0	16.4	1.3	0.0	0.0	0.0	4.2	2.4	0.0	1.3
	7	0.0	0.0	15.6	2.8	0.0	15.1	5.3	0.0	0.0	0.0	4.7	0.5	0.0	1.7
	8	0.6	0.0	18.0	4.3	0.0	12.3	9.8	0.0	0.0	0.0	4.7	0.0	0.0	0.9
	9	1.6	0.0	18.8	6.3	0.1	11.3	7.7	5.9	0.0	0.0	5.7	4.9	0.0	0.7
	10	6.0	0.0	22.4	10.5	0.7	10.5	6.0	3.0	0.0	0.3	5.7	1.8	0.0	1.5
	11	8.3	0.0	23.9	11.6	0.0	15.0	4.7	0.1	0.0	0.7	6.8	0.0	0.0	1.8
	12	8.4	0.0	25.1	11.2	0.0	15.0	4.4	0.0	3.5	1.2	9.9	0.0	0.0	2.0
	13	8.6	0.0	26.4	11.6	0.0	14.5	3.8	0.0	5.4	3.3	11.8	0.0	0.0	3.6
	14	14.5	0.0	37.8	19.5	0.0	15.3	3.6	3.3	0.0	9.9	20.4	0.7	0.0	5.6
	15	18.6	0.0	43.4	23.2	0.3	17.6	5.1	6.1	0.0	11.9	24.9	8.8	0.5	5.7
	16	19.1	0.0	44.5	23.8	6.7	27.0	11.8	0.0	0.0	13.3	27.6	0.3	0.7	7.0
	17	3.0	0.0	38.5	14.8	0.0	9.4	0.7	4.9	0.0	0.0	2.5	0.0	1.4	0.2
	18	9.9	0.0	30.9	13.8	0.0	13.9	10.3	0.0	0.0	7.5	14.4	0.0	0.0	6.3
	19	13.3	0.0	47.6	17.3	10.7	13.7	2.7	0.0	0.0	0.0	16.3	6.5	0.0	5.0
	20	16.6	0.0	34.6	16.6	10.1	14.9	3.5	17.0	0.0	5.3	12.3	3.8	0.0	0.0
	21	29.3	0.8	61.3	34.7	3.6	25.4	11.2	3.5	0.0	25.1	43.0	5.5	4.4	9.8
	22	28.9	0.0	58.8	34.2	5.7	28.7	24.4	4.8	0.0	13.7	30.3	1.2	7.3	11.5
	23	14.5	0.0	37.8	19.0	0.0	14.2	12.2	0.0	0.0	6.5	28.0	0.6	3.1	0.0
	24	8.8	0.0	28.8	12.5	0.0	11.8	3.1	0.7	0.0	11.4	12.1	0.0	0.0	7.3
	25	13.2	0.0	35.2	39.6	9.7	14.0	2.4	18.4	0.0	0.0	7.1	3.8	0.0	5.3
26	17.6	0.0	42.0	22.0	1.6	17.6	4.9	11.9	0.0	11.2	25.3	0.0	0.0	6.3	
27	0.0	0.0	10.0	0.2	0.0	5.7	0.0	0.0	0.0	0.0	2.6	0.0	0.0	0.3	
40	7.9	0.0	27.2	11.3	0.0	12.2	1.9	4.0	0.0	3.7	16.2	1.6	0.0	1.2	
41	8.6	0.0	28.7	12.1	0.0	12.9	2.1	0.3	0.0	6.5	13.5	0.0	0.0	5.5	
42	18.6	0.0	43.4	23.2	0.3	17.6	5.1	6.1	0.0	11.9	24.9	8.8	0.5	5.7	
43	18.6	0.0	43.4	23.2	0.3	17.6	5.1	6.1	0.0	11.9	24.9	8.8	0.5	5.7	
44	19.1	0.0	44.5	23.8	6.7	27.0	11.8	0.0	0.0	13.3	27.6	0.3	0.7	7.0	
45	18.6	0.0	43.4	23.2	0.3	17.6	5.1	6.1	0.0	11.9	24.9	8.8	0.5	5.7	

~~B. Policy Effective Dates April 1, 2008 through March 31, 2009~~

~~For policy effective dates April 1, 2008 through March 31, 2009, for each unit of voluntary retained private passenger business written in credit eligible territories and classifications, participation credits will be given as shown below using approved credit factors and based upon a territory/classification matrix methodology for calculating rate subsidies. Specific credit factors will be determined annually.~~

Credit Factors (continued)														
Rate-Class	10	10	10	10	15	17	17	17	17	18	18	18	30	
Statistical Class	10	20 40	22 42	24 26	15 16	10	15 16	22 42	24 26	10 15 16	20 40	24 26	30	
Territory	1	0.0	3.2	5.5	3.8	0.4	0.0	0.0	1.4	0.0	1.9	1.8	0.0	0.0
	2	0.0	2.0	8.0	4.8	0.0	0.0	0.0	0.9	0.0	0.0	0.8	0.0	0.0
	3	0.0	2.4	7.5	3.6	0.0	0.0	0.0	1.8	0.0	3.5	0.0	0.0	0.0
	4	0.0	3.3	7.7	4.4	0.0	0.0	0.0	2.2	0.0	0.0	0.4	0.0	0.0
	5	0.0	4.4	8.5	4.3	0.0	0.5	0.0	1.7	0.0	1.7	0.0	0.0	0.0
	6	0.0	4.4	8.2	5.0	0.2	0.0	0.0	1.9	0.0	0.0	0.9	0.0	0.0
	7	0.0	4.1	8.5	4.1	0.0	0.0	0.0	2.5	0.0	0.8	0.6	0.0	0.0
	8	0.0	3.0	8.5	4.8	0.2	0.0	0.0	2.7	0.0	0.5	0.9	0.0	0.0
	9	0.0	2.0	8.8	3.3	0.0	0.0	0.0	1.6	0.0	1.5	0.0	0.0	0.0
	10	0.0	2.4	9.3	4.5	0.0	0.0	0.0	2.4	0.0	7.5	0.0	0.0	0.0
	11	0.0	3.5	6.5	3.6	0.6	1.4	0.0	2.4	0.0	0.1	2.5	0.0	0.0
	12	0.0	3.0	8.0	4.3	0.0	0.0	0.0	2.9	0.0	0.1	1.0	0.0	0.0
	13	0.0	5.9	7.2	5.0	0.0	0.3	0.0	3.0	0.0	2.8	2.1	0.0	0.0
	14	0.3	1.3	13.3	7.1	0.0	0.0	0.0	5.4	0.0	1.6	0.0	0.0	0.0
	15	0.6	9.9	12.8	8.9	0.0	2.1	0.0	12.1	2.1	0.3	4.9	1.2	0.0
	16	3.1	4.9	24.5	11.9	0.6	4.0	0.0	18.5	6.5	6.5	1.1	0.0	0.0
	17	0.0	0.3	11.8	2.1	0.4	0.0	0.0	7.7	0.0	6.8	0.0	0.0	0.0
	18	4.7	15.5	18.4	13.9	0.0	1.2	0.0	5.9	0.0	0.5	1.2	0.0	0.0
	19	1.2	3.6	16.2	5.5	1.3	0.8	0.0	13.9	0.0	0.6	0.3	0.0	0.0
	20	6.1	17.3	24.2	12.6	0.0	0.7	0.0	13.7	0.0	3.7	0.0	0.0	0.0
	21	7.1	9.2	28.3	17.9	2.6	10.3	0.7	28.9	15.0	4.0	5.6	8.1	0.0
	22	9.5	13.1	27.5	16.0	3.6	10.1	0.4	29.6	14.5	6.1	10.0	0.0	0.0
	23	0.0	0.8	8.0	2.9	1.9	4.5	0.0	6.8	0.0	0.8	0.0	0.0	0.0
	24	0.0	4.3	8.3	3.0	0.0	3.4	0.0	5.2	0.0	0.3	0.0	2.8	0.0
	25	0.4	1.6	9.7	4.0	0.0	4.5	0.0	8.6	0.0	10.7	0.0	0.0	0.0
26	1.2	11.6	19.2	5.6	0.8	2.5	0.0	13.4	5.1	1.1	0.0	2.9	0.0	
27	0.0	1.2	6.7	3.4	0.1	0.0	0.0	0.7	0.0	0.6	0.0	0.0	0.0	
40	0.8	5.8	9.2	10.6	0.7	0.0	0.0	3.8	0.0	7.7	0.0	0.0	0.0	
41	0.0	3.2	8.3	5.7	0.0	0.6	0.0	3.6	0.0	0.8	0.1	0.0	0.0	
42	1.3	3.4	10.7	7.2	0.0	4.8	0.0	4.5	5.8	0.3	3.5	0.0	0.0	
43	1.0	8.8	14.6	11.0	0.0	5.3	0.0	8.3	1.6	0.3	0.0	2.6	0.0	
44	2.2	3.6	14.5	6.4	0.2	6.8	0.0	10.4	3.9	3.8	5.3	0.0	1.1	
45	2.4	4.3	13.1	10.5	0.0	4.8	0.0	10.5	1.7	1.3	3.9	0.0	0.0	

Credit Factors (continued)															
Rate Class	20	20	20	20	21	21	21	25	25	25	25	26	26	26	
Statistical Class	10	15 16	22	24	10 15 16	20	24	10	15 16	26	42	10 15 16	26	40	
Territory	1	0.0	0.0	9.2	3.4	0.0	8.5	0.6	0.0	0.0	0.0	0.6	0.0	0.4	0.0
	2	0.0	0.0	12.0	2.3	4.7	5.7	0.0	0.0	0.0	0.0	2.2	2.8	0.0	0.0
	3	0.0	0.0	12.7	3.8	0.0	6.0	4.4	0.0	0.0	0.0	1.5	4.0	0.0	0.0
	4	0.0	0.0	20.9	7.5	0.0	9.8	1.6	0.0	0.0	0.0	1.2	0.0	0.0	0.6
	5	0.0	0.0	11.2	5.9	0.0	6.9	0.1	0.0	0.0	0.0	1.5	0.0	0.0	0.3
	6	0.0	0.0	11.6	1.5	0.0	15.5	0.0	0.0	0.0	0.0	2.6	0.0	0.0	1.4
	7	0.0	0.0	14.2	0.1	0.0	14.3	2.3	0.0	0.0	0.0	2.7	0.0	0.0	1.7
	8	2.8	0.0	20.0	3.1	0.0	8.2	10.1	2.7	0.0	0.0	0.9	0.0	0.0	0.0
	9	0.0	0.0	14.4	4.8	0.0	12.6	0.0	3.5	0.0	0.0	3.0	3.3	0.0	1.1
	10	0.0	0.0	27.8	4.0	0.0	8.7	7.2	0.0	0.0	0.0	3.1	6.1	0.1	0.0
	11	2.2	0.0	18.1	3.8	0.0	8.8	10.8	4.9	0.0	0.0	6.9	6.5	0.0	0.0
	12	0.8	0.0	20.1	5.3	0.0	12.0	1.9	0.0	0.0	0.1	9.1	0.0	0.0	1.0
	13	4.4	0.0	22.1	8.3	0.0	11.3	2.3	0.0	0.0	1.1	8.7	0.0	0.0	2.6
	14	4.4	0.0	25.3	9.2	0.0	11.4	1.2	3.3	0.0	8.3	7.7	8.2	0.0	3.7
	15	13.1	0.0	38.8	19.0	0.0	14.9	3.5	0.0	5.5	9.2	29.5	0.0	0.3	11.7
	16	13.4	0.0	39.4	19.5	3.7	33.5	8.7	4.1	6.1	14.9	29.4	4.5	14.0	4.2
	17	0.0	0.0	35.6	6.7	0.0	8.3	1.6	5.5	0.0	0.0	5.0	5.9	1.8	0.0
	18	8.2	0.0	27.3	10.6	0.0	14.8	13.7	0.0	0.0	6.9	9.9	0.0	0.0	2.3
	19	8.8	0.0	38.2	14.2	1.1	11.9	1.7	11.0	1.4	0.0	7.7	0.0	4.6	4.1
	20	7.8	0.0	32.1	13.3	6.2	11.6	1.3	14.8	0.7	0.8	11.5	0.0	3.8	0.0
	21	23.8	0.0	55.5	31.6	2.7	22.4	12.0	1.4	13.2	26.4	35.9	13.3	3.8	6.9
	22	23.2	0.0	54.4	30.6	4.6	25.7	10.5	0.8	13.6	12.2	33.8	1.0	0.0	19.9
	23	9.5	0.0	34.0	15.4	0.0	12.7	13.5	0.0	1.9	1.5	24.4	0.0	0.0	5.1
	24	4.5	0.0	25.3	9.4	0.0	10.6	1.2	0.0	0.0	11.6	17.3	2.1	0.0	6.0
	25	8.3	0.0	31.2	36.5	10.4	11.9	2.0	1.1	0.8	0.0	9.5	8.1	0.0	6.1
26	12.5	0.0	37.6	21.9	0.0	15.9	4.0	20.1	4.5	11.4	11.9	0.0	0.0	12.0	
27	0.0	0.0	16.2	0.0	0.0	5.0	0.0	1.2	0.0	0.0	1.8	0.0	0.0	0.3	
40	5.3	0.0	23.1	9.3	0.0	21.2	0.9	9.6	0.0	0.0	8.8	7.4	0.0	0.0	
41	3.8	0.0	24.1	8.4	0.0	17.9	1.1	0.0	0.0	1.9	12.9	1.8	0.0	7.9	
42	12.8	0.0	38.5	19.4	1.3	15.7	6.7	16.7	5.4	11.9	20.2	11.9	3.1	0.7	
43	13.0	0.0	38.5	21.9	7.5	18.2	3.9	0.0	5.6	10.2	16.7	0.0	0.0	3.3	
44	12.6	0.0	38.3	18.8	3.1	20.8	25.5	18.4	5.3	20.7	19.9	16.3	0.0	6.8	
45	13.5	0.0	39.7	22.7	0.0	17.6	3.8	12.2	5.8	6.5	20.8	0.0	0.5	5.8	

A. Appointments

~~1. Private Passenger~~

~~The Governing Committee shall appoint Servicing Carriers as authorized in the Plan and Rules of Operation. A Member may be excused from its private passenger Servicing Carrier responsibilities for Exclusive Representative Producer business if the Member executes an agreement with another entity for handling its share of private passenger Exclusive Representative Producer business. The agreement must be reviewed and approved by CAR. Nothing in this paragraph shall be construed to affect the rights of any private passenger Servicing Carrier to enter into any contractual agreement for the purpose of servicing the Servicing Carrier's voluntary or voluntary ceded private passenger business. Nothing in this paragraph shall be construed so as to relieve any Servicing Carrier of its share of the underwriting and/or administrative expenses of CAR nor of its responsibility to provide coverage as required by G.L. c. 175, §113H(A).~~

~~a. Each Member Company is required to be a private passenger Servicing Carrier provided the company's reported written property damage liability exposures for private passenger motor vehicle insurance business equals or exceeds an established threshold as follows:~~

~~(1) For private passenger business, all companies with 5,000 or more reported written property damage liability exposures for the most recently completed policy year, will be required to become a private passenger Servicing Carrier effective January 1st of the next policy year following notification of eligibility status.~~

~~2. Commercial~~

~~a. For commercial motor vehicle business effective prior to January 1, 2006, each company with reported voluntarily produced commercial written premium equal to or greater than 0.5% of the total market voluntarily produced commercial written premium, will be required to become a commercial motor vehicle Servicing Carrier effective January 1st of the next policy year following notification of eligibility status. A Member will only be required~~

~~to become a Servicing Carrier when it has met or exceeded the above stated threshold.~~

~~1.b. For policies effective January 1, 2006 and subsequent, t~~The Governing Committee shall appoint Members to serve as commercial a limited number of Servicing Carriers, for a specified term period of time, as authorized in the Plan and Rules of Operation, based on the responses of Member Companies to the Request for Proposal ~~for Servicing Carrier~~ for Massachusetts Residual Market Commercial Automobile Business (RFP). The Governing Committee or its designee shall establish the RFP criteria.

~~a.(1)~~A commercial Servicing Carrier may only enter into an ~~contractual~~ agreement for the purpose of servicing its commercial ceded business, if the terms and conditions of that agreement have been fully disclosed in the response of that Member to the ~~aforementioned RFP. Request for Proposal.~~

~~b.(2)~~A commercial Servicing Carrier, in addition to satisfying the requirements listed in Section A.3.4., below, shall be required to satisfy all criteria contained in the ~~aforementioned RFP, Request for Proposal~~, consistent with the Member's response to the RFP. Request for Proposal.

~~2. No domestic insurance company shall be denied participation in the RFP process to serve as a Servicing Carrier based solely upon its share of the Massachusetts Motor Vehicle Insurance market.~~

~~3. For purposes of determining Servicing Carrier eligibility, groups of companies under the same ownership and management will be treated as a single member company.~~

~~34. In order to assure the protection of the public interest, t~~The Governing Committee in considering the appointment of a Member as a Servicing Carrier, shall require ~~the following:~~

~~a. T~~hat the company has satisfied the Governing Committee that it, or another entity pursuant to its response to the RFP, a written agreement reviewed and approved by the Governing Committee or its designee, has the ability to, and ~~it~~ will effectively:

~~a.(1)~~ Provide policy issuance and premium collection services for all eligible classes of risks, except for those classes of risks specifically exempted by the Commissioner upon the request of the applicant.

~~b.(2)~~ Service insurance claims in every state, the District of Columbia and Canada.

~~c.(3)~~ Administer a ~~D~~irect ~~B~~ill ~~P~~rogram ~~for Private Passenger risks and for Commercial risks.~~

~~d.(4)~~ Provide an ~~I~~nstallment ~~P~~ayment ~~P~~lan in accordance with the provisions of the Request for Proposal for Massachusetts Residual Market Commercial Automobile Business, which has been filed with and approved by the Commissioner. The Installment Payment Plan shall require no more than a 30% first or deposit payment on or before the policy effective date, and no less than seven monthly payments thereafter. A Servicing Carrier shall cooperate with its Exclusive Representative Producers (ERPs) to assure that policyholders are made aware of their option to utilize an ~~I~~nstallment ~~P~~ayment ~~P~~lan.

~~e.(5)~~ Maintain a Special Investigative Unit to investigate suspicious or questionable Motor Vehicle Insurance claims for the purpose of eliminating fraud, and to assist in the verification of garaging and policy facts on a representative sample of policies.

~~f.(6)~~ Report all required information to CAR in an accurate and timely manner.

~~g.(7)~~ Adopt and maintain a plan approved by the Commissioner ~~of Insurance~~ providing for direct payment by the insurer to the insured under collision, limited collision, comprehensive, and fire and theft coverages.

~~This requirement shall apply to all private passenger Servicing Carriers whose average market share for the three years preceding equals or exceeds one percent of the total private passenger market.~~

~~Additionally, this requirement shall also apply to all commercial Servicing Carriers January 1, 2006 and subsequent.~~

B. Servicing Carrier Responsibilities

~~1. No domestic insurance company shall be denied participation as a Servicing Carrier based solely upon its share of the Massachusetts motor vehicle insurance market.~~

~~12. If a A Servicing Carrier that has contracted with a third party for performing any of its Servicing Carrier's responsibilities, the Servicing Carrier guarantees said the third party's performance, by such third party.~~

~~23. A Servicing Carriers must provide quality service to CAR policyholders by maintaining the standards established as a condition of appointment under Section A. 3.4. of this Rule.~~

~~3. A Servicing Carrier shall provide the same level of service to ceded policies as it provides to policies issued voluntarily.~~

~~4. Policies and Forms~~

~~a. For private passenger business, policies and other forms mailed to policyholders shall be the same as those used for non Servicing Carrier motor vehicle business. Servicing Carriers shall provide the same level and type of service to policies issued through CAR, as they provide to policies issued voluntarily.~~

~~4b. For commercial business, pPolicies and other forms mailed to policyholders shall be the same as those specifically referenced in CAR's Manual of Administrative Procedures.~~

~~e. Servicing Carriers shall provide the same level and type of service to policies issued through CAR, as they provide to policies issued voluntarily.~~

~~5. For Private Passenger Motor Vehicles~~

~~No group or members of a group under the same management or ownership or both may charge rates on business subject to the provisions of G.L. c. 175, §113B, different from those fixed and~~

~~established under such section or provide different levels of service through a member of the group that is not a Servicing Carrier than is provided to policyholders insured by a Servicing Carrier member of the group.~~

56. General Duties

The A Servicing Carrier shall perform the following general duties:

- a. Provide a contract signed by an authorized company representative with terms consistent with ~~these~~ the Rules of Operation to a qualified newly ~~assigned or reassigned~~ appointed or reappointed ERP within 15 business days of the Servicing Carrier's receipt of the assignment appointment by CAR. If the Servicing Carrier determines that the ~~assigned or reassigned~~ appointed or reappointed ERP is not duly qualified, the Servicing Carrier will notify CAR within two business days of that determination.

~~However, during the initial period of assigning ERPs to one of the limited number of Servicing Carriers appointed to issue commercial policies effective January 1, 2006 and subsequent, the Servicing Carrier must provide a contract signed by an authorized company representative with terms consistent with these Rules no less than 60 calendar days prior to January 1, 2006. If the Servicing Carrier determines that the assigned ERP is not duly qualified, the Servicing Carrier will notify CAR within 2 business days of that determination.~~

- ~~b. Accomplish confirmation of operator driving licenses and records in order to effectively administer the Safe Driver Insurance Plan.~~

- be. Verify that ~~representations~~ information contained in the application for insurance ~~are~~ is accurate as to classification, garaging, discounts, credits, vehicle use, vehicle description and experience for those risks eligible to be experience rated.

- cd. 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.

- de. Adopt procedures designed to assure that all assigned ~~Exclusive Representative Producers~~ ERPs comply with all provisions of the contract between the Servicing Carrier and the producer.

ef. Implement procedures to assure collection of premiums billed.

fg. Comply with the terms and conditions of premium finance notes and/or agreements submitted to the Servicing Carrier, on behalf of applicants for insurance, by the producer or by a premium finance company licensed under the laws of the Commonwealth of Massachusetts.

~~h. — Termination~~

~~Servicing Carriers shall be entitled to immediately terminate an Exclusive Representative Producer's contract to bind coverage on behalf of the Servicing Carrier when any of the conditions listed below exist or upon failure of the Exclusive Representative Producer to meet the requirements/definition of Exclusive Representative Producer as defined in Rule 2 of the Rules of Operation:~~

~~(1) Those conditions deemed to be cause for immediate termination of an Exclusive Representative Producer contract and authority to bind coverage shall include:~~

~~(a) Failure to maintain a valid agents/brokers license as issued by the Division of Insurance.~~

~~(b) Willful misappropriation of premium due a Servicing Carrier in accordance with the provisions of CAR's Rules of Operation.~~

~~(c) 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.~~

~~(2) The following conditions shall be cause for a Servicing Carrier to terminate an Exclusive Representative Producer's authority to bind coverage on behalf of a Servicing Carrier with said Exclusive Representative Producer being entitled to a thirty day written notice of termination:~~

~~(a) Failure to remit payments to a Servicing Carrier on a timely basis in accordance with CAR's Rules of Operation.~~

- ~~(b) Failure to notify the Servicing Carrier 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.~~
 - ~~(c) Failure to assist the Servicing Carrier during any audit or investigation.~~
 - ~~(d) Violations of the conditions set forth in the Servicing Carrier contract.~~
 - ~~(e) Failure to report all coverages bound within two working days of the effective date of coverage.~~
 - ~~(f) Failure to comply with reasonable procedures as supplied by the Servicing Carrier for processing claims, remitting premiums, and requesting coverages.~~
 - ~~(g) Failure to adhere to a directive issued by the Commissioner relative to the charging of service fees.~~
 - ~~(h) Failure to provide a reasonable and good faith effort to verify the information provided by the applicant, including rating and licensing data.~~
 - ~~(i) Failure to comply with applicable agency requirements and procedures, as prescribed in CAR's Rules of Operation.~~
 - ~~(j) Failure to refrain from brokering private passenger business, as defined in Rule 14.B.1.f.~~
- ~~(3) All Exclusive Representative Producer terminations issued by a Servicing Carrier, both immediate and thirty (30) day terminations, shall:~~
- ~~(a) Be in writing.~~
 - ~~(b) State the specific CAR Rule provision(s) that constitute the basis for the termination.~~
 - ~~(c) Include a copy of the CAR Request for Review form, and a copy of the section of Rule 13 entitled "Termination", to~~

~~advise the ERP of its right to request a review of the termination by CAR.~~

~~(d) Be hand delivered or mailed by a method that provides proof of mail to the ERP's principal place of business, with a copy of the termination notice sent to CAR concurrently.~~

~~(e) Define changes in operational procedures, if any, that the Servicing Carrier intends to implement concurrent with the ERP's termination effective date.~~

~~It shall be the responsibility of each Member of CAR to so notify CAR of any change in the status of any of their producers so that this information may be communicated to the remaining Servicing Carriers. It shall also be the responsibility of each Member to so notify CAR of any Exclusive Representative Producer which defaults on premium payments.~~

~~Any Exclusive Representative Producer terminated pursuant to this Rule may request that the termination be reviewed by CAR pursuant to the provisions of Rule 20. A complete "Request For Review" form must be received by CAR within 30 calendar days of the delivery of the termination notice, with a copy of this Rule and a copy of the "Request For Review" form, to the ERP's principal place of business. A review by the Market Review Committee of CAR will be held within 15 business days of the date of CAR's receipt of the completed "Request For Review" form.~~

~~If the termination is upheld by the Market Review Committee, the terminating Servicing Carrier may commence issuance of non-renewal notices as of the date of the Committee's decision, unless the ERP requests, and is granted, a stay of non-renewal notifications. The request for a stay must be made before the adjournment of the Market Review Committee meeting at which the termination has been sustained. The request for stay must be made in conjunction with the ERP's stated intent to have the Committee's action reviewed by the Governing Committee Review Panel, pursuant to Rule 20. The Market Review Committee has the discretion to grant such a stay only if it deems such action is appropriate.~~

~~At the time a termination notice is issued, the Servicing Carrier will continue to service the ERP's in force business, until all of the policies have been legally cancelled or non-renewed. Such service will include additions, deletions and changes of vehicles and coverages on in force policies. The Servicing Carrier may define changes in operational procedures, as are necessary to effectively service the in force policies. If the changes in procedures are to be implemented as of the termination effective date, the Servicing Carrier will provide written explanations of those procedures at the time of the notice of termination. The ERP may request a review of any such changes in the Servicing Carrier's operational procedures.~~

- ~~i.~~ Report immediately to CAR and the Division of Insurance any termination of an Exclusive Representative Producer's contract and initiate procedures in a timely manner, including litigation if necessary, to administer a controlled run-off of the business from an Exclusive Representative Producer whose agreement has been terminated.
- ~~gj.~~ Maintain effective communication with ~~Exclusive Representative Producers~~ ERPs by scheduling meetings when necessary and conducting ~~whatever~~ educational or /training sessions as may be ~~required~~ necessary to assure that ~~Exclusive Representative Producers~~ ERPs provide quality service to the motoring public.
- ~~hk.~~ Verify, prior to contracting and on an ongoing basis, producer eligibility for assignment appointment to a Servicing Carrier as required by G.L. c. 175, §113H.
- ~~il.~~ Provide ~~Exclusive Representative Producers~~ ERPs with all information and procedures required for them to effectively service policies ~~issued through ceded to~~ CAR.
- ~~jm.~~ Comply with all of the provisions of the Plan and Rules of Operation and the Manual of Administrative Procedures.
- ~~kn.~~ Maintain records of infractions of the Rules of Operation ~~of CAR~~ by ~~Exclusive Representative Producers~~ ERPs and report such infractions as appropriate, and necessary.
- ~~le.~~ Provide ~~Exclusive Representative Producers~~ ERPs with necessary information from the policy declaration page, in a usable format

- and medium, to support their servicing of their insureds, ~~in an appropriate and usable format and medium.~~
- mp. Provide producers with a list of approved inspection services for conducting pre-inspections.
- nq. Provide ~~Exclusive Representative Producers, at least quarterly,~~ ERPs with premium, production, and experience data on their business, at least quarterly.
- of. On an annual basis, provide CAR with information relative to each ERP's affiliation status for commercial Motor Vehicle Insurance. Identify any contractual relationship or membership in a producer cluster or network that the ERP may have or whether the ERP has a direct or indirect material and continuing proprietary or management interest in another agency or brokerage firm having an ERP appointment to another Servicing Carrier. Include Notify CAR of any new affiliated agency affiliations status, or changes in affiliated agency relationships.
- p. Offer training on claim reporting and fraud recognition to producers and their customer service representatives.
- q. On an annual basis, evaluate an ERP's book of business to assure that minimum commercial Motor Vehicle Insurance written premium volume requirements are met pursuant to the provisions of Rule 14.C.1. Provide a copy of the evaluation to the ERP and to CAR within 15 days of the evaluation date.
- r. Terminate an ERP's contract to bind coverage in accordance with Section B.7.

7. Termination of ERP Contracts

- a. A Servicing Carrier shall be entitled to immediately may terminate an Exclusive Representative Producer ERP's contract and authority to bind coverage on behalf of the Servicing Carrier when any of the conditions listed below exist or upon failure of the Exclusive Representative Producer ERP to meet the eligibility requirements/ and/or definition of Exclusive Representative Producer ERP as defined in Rule 2 of as provided by the Rules of Operation or upon failure of the ERP to fulfill any of the requirements of Rule 14.B.1.

- (1) ~~A Servicing Carrier shall have cause to immediately terminate an ERP's contract and the authority to bind coverage pursuant to the provisions of Rule 14.B.2.a. Those conditions deemed to be cause for immediate termination of an Exclusive Representative Producer contract and authority to bind coverage shall include:~~
- ~~(a) Failure to maintain a valid agents/brokers license as issued by the Division of Insurance.~~
 - ~~(b) Willful misappropriation of premium due a Servicing Carrier in accordance with the provisions of CAR's Rules of Operation.~~
 - ~~(c) 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.~~
- (2) ~~The following conditions shall be cause for a A Servicing Carrier shall have cause to terminate an Exclusive Representative Producer's ERP's contract and the authority to bind coverage on behalf of a Servicing Carrier with said Exclusive Representative Producer being entitled to a with thirty days written notice of termination pursuant to the provisions of Rule 14.B.2.b.:~~
- ~~(a) Failure to remit payments to a Servicing Carrier on a timely basis in accordance with CAR's Rules of Operation.~~
 - ~~(b) Failure to notify the Servicing Carrier 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.~~
 - ~~(c) Failure to assist the Servicing Carrier during any audit or investigation.~~
 - ~~(d) Violations of the conditions set forth in the Servicing Carrier contract.~~
 - ~~(e) Failure to report all coverages bound within two working days of the effective date of coverage.~~

~~(f) Failure to comply with reasonable procedures as supplied by the Servicing Carrier for processing claims, remitting premiums, and requesting coverages.~~

~~(g) Failure to adhere to a directive issued by the Commissioner relative to the charging of service fees.~~

~~(h) Failure to provide a reasonable and good faith effort to verify the information provided by the applicant, including rating and licensing data.~~

~~(i) Failure to comply with applicable agency requirements and procedures, as prescribed in CAR's Rules of Operation.~~

~~(j) Failure to refrain from brokering private passenger business, as defined in Rule 14.B.1.f.~~

b. (3) All ~~Exclusive Representative Producer~~ ERP terminations issued by a Servicing Carrier, both immediate and ~~thirty (30)~~ day terminations, shall:

(1a) Be in writing.

(2b) State the specific CAR Rule provision(s) that constitute the basis for the termination.

(3) Define changes in operational procedures, if any, that the Servicing Carrier intends to implement upon the ERP's receipt of the termination notice.

(4e) Advise the ERP of the right to request that the termination be reviewed by CAR, pursuant to Rule 14.F. and include a copy of the CAR's "Request for Review/Relief" form, and a copy of the section of Rule 13 entitled "Termination", to advise the ERP of its right to request a review of the termination by CAR.

(5d) Be hand delivered or mailed by a method that provides proof of mail to the ERP's principal place of business, with a copy of the termination notice sent to CAR and the Division of Insurance concurrently.

~~(e) Define changes in operational procedures, if any, that the Servicing Carrier intends to implement concurrent with the ERP's termination effective date.~~

~~It shall be the responsibility of each Member of CAR to so notify CAR of any change in the status of any of their producers so that this information may be communicated to the remaining Servicing Carriers. It shall also be the responsibility of each Member to so notify CAR of any Exclusive Representative Producer which defaults on premium payments.~~

c. A Servicing Carrier shall initiate procedures in a timely manner to administer a controlled run off of the business from an ERP whose contract has been terminated.

d. At the time When a termination notice is issued, the Servicing Carrier ~~will~~ shall continue to service the ERP's in-force business, until all of the policies have been legally cancelled or non-renewed. Such service ~~will~~ includes additions, deletions and changes of vehicles and coverages on in-force policies. ~~The Servicing Carrier may define changes in operational procedures, as are necessary to effectively service the in-force policies. If the changes in procedures are to be implemented as of the termination effective date, the Servicing Carrier will provide written explanations of those procedures at the time of the notice of termination. The ERP may request a review of any such changes in the Servicing Carrier's operational procedures.~~

~~Any Exclusive Representative Producer terminated pursuant to this Rule may request that the termination be reviewed by CAR pursuant to the provisions of Rule 20.~~

~~A complete "Request For Review" form must be received by CAR within 30 calendar days of the delivery of the termination notice, with a copy of this Rule and a copy of the "Request For Review" form, to the ERP's principal place of business. A review by the Market Review Committee of CAR will be held within 15 business days of the date of CAR's receipt of the completed "Request For Review" form.~~

e. If the termination is upheld by the Market Review Committee, the terminating A Servicing Carrier may commence issuance of non-renewal notices following termination of an ERP appointment

~~provided that the termination has not been stayed or overturned in accordance with the provisions of Rule 14.F. and Rule 20. as of the date of the Committee's decision, unless the ERP requests, and is granted, a stay of non-renewal notifications.~~

~~The request for a stay must be made before the adjournment of the Market Review Committee meeting at which the termination has been sustained. The request for stay must be made in conjunction with the ERP's stated intent to have the Committee's action reviewed by the Governing Committee Review Panel, pursuant to Rule 20. The Market Review Committee has the discretion to grant such a stay only if it deems such action is appropriate.~~

87. Reporting Requirements

All eligible coverages written by a Servicing Carrier must be reported to CAR in accordance with the following provisions:

- a. New Business – A Servicing Carriers must provide CAR written or electronic notice of eligible coverages bound within 23 ~~twenty-three~~ calendar days of the effective date of the policy, otherwise CAR's obligation to provide for reimbursement ~~of for~~ losses shall ~~become effective~~ commence on the date which CAR receives proper written or electronic notification of the eligible coverages bound.
- b. Renewals – A Servicing Carriers must provide CAR with a written or electronic notice of eligible coverages bound prior to the effective renewal date of the policy, otherwise CAR's obligation to provide for reimbursement ~~of for~~ losses shall ~~become effective~~ commence on the date which CAR receives proper written or electronic notification of the eligible coverages bound.
- c. A Servicing Carrier may elect to cede 100% of the commercial new business of an ERP. ~~This option can be selected for only private passenger new business, for only commercial new business, or for all new business from the ERP.~~ If this option is selected, the Servicing Carrier must cede all eligible new business produced by the ERP, and CAR's obligation for reimbursement for losses will commence as of the new business policy's effective date, regardless of the date that the cession notice is received by CAR.

When an ERP is newly ~~assigned~~ appointed to a Servicing Carrier by CAR, the Servicing Carrier may ~~have~~ elect the 100% cede option apply as of the contracting date provided that CAR is notified in writing by the Servicing Carrier of ~~their~~ its intentions within ~~thirty~~ (30) calendar days of the Servicing Carrier's receipt of the assignment appointment. After the initial ~~thirty~~ (30) calendar day period, ~~all the~~ elections by a Servicing Carrier to cede 100% of an ERP's new business must apply as of the first day of a month, which date must be no less than ~~thirty~~ (30) calendar days later than the date that the notification is received by CAR. Servicing Carriers may change elections, ~~with~~ and the same notification lead times to CAR applying.

Absent specific notice to CAR of the intention to cede 100% of an ERP's new business, all new business produced by an ERP will be ceded in accordance with Section B.8.a. 7.a. above. Regardless of the Servicing Carrier's new business 100% cede election for a particular ERP, all renewal business from the ERP will be ceded in accordance with Section B.8.b. 7.b. above.

- d. A Servicing Carriers must report ~~on a monthly basis their~~ written premiums, ~~written~~, paid and outstanding losses, allowable expenses and any other information which may be required by the Plan, and Rules of Operation, or the Manual of Administrative Procedures and the Massachusetts Commercial Automobile Statistical Plan.
- ~~e. If a Servicing Carrier elects to cede a policy, all coverages written on that policy which are eligible coverages under Rule 6 must be reported, as ceded, to CAR, by the Servicing Carrier.~~

~~8. Continuation of Eligibility as a Servicing Carrier~~

~~A private passenger Servicing Carrier must maintain a viable book of voluntarily written private passenger motor vehicle policies. The Commissioner may terminate any Servicing Carrier if he finds that disruptive reductions in voluntarily issued private passenger motor vehicle policies are in violation of this section.~~

~~9. Inducements~~

~~No Servicing Carrier shall offer any inducement, monetary or otherwise, to the ERP of another Servicing Carrier to incent that ERP~~

~~to accept business from, or to purchase, that Servicing Carrier's ERP or a part of that ERP's book of business. CAR will not recognize any ERP sale, unless the purchasing ERP and the Servicing Carrier of the selling ERP submit affidavits that such inducements or incentives are not part of the transaction.~~

~~10. Penalties~~

~~If CAR determines that either a Servicing Carrier or a Non-Servicing Carrier Member of CAR is found to have provided a direct incentive for either an ERP or a voluntary producer to engage in brokering activity prohibited by Rule 14.B.1.r., CAR shall assess a penalty on such Servicing Carrier or Non-Servicing Carrier for all exposures or premium identified as being so brokered. The assessment shall be \$2,000 per exposure for private passenger motor vehicles for each of the calendar years in which the business was brokered, with a minimum penalty of \$25,000.~~

~~C. ERP Subscription~~

~~1. Subscription Share (Ought to Have) and Methodology — Private Passenger~~

~~a. Servicing Carriers will be assigned Exclusive Representative Producers (ERPs) based upon the Servicing Carrier's total market share. The Servicing Carrier's "ought to have" share of ERP exposures will be equal to the Servicing Carrier's percentage of the total market multiplied by the sum of all Servicing Carriers' ERP exposures. Servicing Carrier ERP subscription reports will be developed based upon statistical data reported to CAR for the latest twelve (12) policy effective months. CAR will verify, validate and/or adjust this data for use in the subscription process, including the assignment and reassignment of ERPs and Servicing Carrier oversubscription relief.~~

~~b. A Servicing Carrier's "over or under subscription" position will be determined by comparing its actual number of ERP exposures to its "ought to have" number of ERP exposures and expressing the result as a percentage of the "ought to have" number of ERP exposures.~~

~~e. A Servicing Carrier's over/under subscription level is arrived at by subtracting its own number of ERP exposures from its "ought to have" number of ERP exposures as defined above.~~

~~(1) A Servicing Carrier assigned a newly emerging ERP will be credited with the greater of 400 exposures or the actual number of exposures written by that ERP until the third anniversary of the assignment, for purposes of determining the Servicing Carrier's subscription level. Thereafter, the actual number of exposures written by that ERP will be attributed to the Servicing Carrier.~~

~~Exposures written by producers appointed as ERPs, as a result of losing their last voluntary private passenger market, are to be fully attributed to the successor Servicing Carrier at the time of appointment. The Servicing Carrier terminating the voluntary relationship will have exposures deducted from its share as those exposures expire or are written through another carrier.~~

~~(2) When one ERP purchases an entire book of automobile business from another ERP, the exposures associated with the purchased ERP will be fully attributed to the successor Servicing Carrier and will be deducted from the predecessor Servicing Carrier at the time of transfer and the selling ERP's appointment will be terminated. Voluntarily contracted ERP transfers will be counted as voluntary agent produced exposures for the successor Servicing Carrier and subtracted from the ERP Servicing Carrier on an "as written" basis.~~

~~(3) Companies which have been Servicing Carriers for thirty-six (36) months or less will have their voluntarily written (non-ERP) exposure total "grossed up" using a factor that is based on a three (3) year rolling average of the industry non-ERP cession rate. The factor will be updated annually at the end of June.~~

~~(4) The primary consideration for subscription order will be based on a Servicing Carrier's percentage of their "ought to have" ERP share. However, for Servicing Carriers between 75% and 100% of their "ought to have" ERP shares, subscription will be calculated in 5% intervals within which subscription order will be based on exposure counts.~~

~~(5) No ERP with greater than 300 exposures shall be assigned to a Servicing Carrier where the assignment will result in the Servicing Carrier exceeding 105% of its "ought to have" ERP share. In the event that an assignment would bring a carrier over 105%, the ERP will be assigned to the next most undersubscribed Servicing Carrier where the assignment complies with this Rule, and the most undersubscribed Servicing Carrier will remain eligible for the next assignment.~~

~~d. A Servicing Carrier is prohibited from entering into a two or three party agreement with an ERP for the purpose of a change in assignment.~~

~~e. If an ERP receives a voluntary contract from a Servicing Carrier and is subsequently terminated within twenty four (24) months of the contract date, the canceling Servicing Carrier's and industry's exposure totals will continue to include the producer's number of exposures, in force as of the cancellation date, as "produced by a voluntarily contracted producer" for a period of thirty six (36) months. In addition, actual exposures written will be counted as ERP exposures for the newly assigned ERP Servicing Carrier.~~

~~f. If a Servicing Carrier is undersubscribed by 25% and 1,000 exposures or for three (3) consecutive months, CAR will simultaneously notify the Governing Committee and all oversubscribed Servicing Carriers of that circumstance. The Governing Committee will determine whether to order a redistribution of ERPs from oversubscribed Servicing Carriers to the undersubscribed carrier. An oversubscribed Servicing Carrier may notify the Governing Committee of its desire to forego any redistribution of its ERPs. Upon Governing Committee direction, CAR will randomly reassign ERPs from the then most oversubscribed Servicing Carrier until the undersubscribed Servicing Carrier's subscription approximates its "ought to have" share pursuant to the procedures outlined in C.2.~~

~~2. Subscription Relief - Private Passenger~~

~~In order to assure that the subscription relief process is responsive to those Servicing Carriers that become oversubscribed and to further assure that the relief process itself does not cause additional Servicing Carriers to become oversubscribed, the following methodology will be~~

~~used to provide subscription relief, making every effort to reduce the oversubscribed Servicing Carrier to a level of 100% of its “ought to have” ERP exposures.~~

~~a. A Servicing Carrier may petition CAR for relief if it has been oversubscribed at a level of 110% or more for a period of three (3) or more consecutive months. The petition will be in writing and addressed to the President of CAR.~~

~~b. CAR will confirm the petitioner’s eligibility for relief based upon the Servicing Carrier’s subscription level at the time of the Servicing Carrier’s petition. CAR will verify and validate the petitioning Servicing Carrier’s reported data for the applicable three (3) month period. CAR will also review all Servicing Carriers’ data reported for the same period, pursuant to C.1.a. Upon completion of the data validation process, CAR will then perform the following subscription relief procedure.~~

~~(1) CAR will randomly select ERPs of the petitioning Servicing Carrier and will reassign those ERPs to the most undersubscribed Servicing Carrier pursuant to C.1. However, if a randomly selected ERP will reduce the petitioning Servicing Carrier’s “ought to have” ERP share to below 100%, or, if the reassignment of the ERP causes the most undersubscribed Servicing Carrier’s ERP subscription level to go above 100%, the ERP will not be assigned and a new selection will be made.~~

~~(2) Following the reassignment of each individual ERP, CAR will recalculate subscription levels for all Servicing Carriers. The process will continue until the petitioning Servicing Carrier’s subscription level is as close to 100% as possible without going below 100%. In any event, the petitioning Servicing Carrier’s subscription level must be less than 105% of its “ought to have” number of ERP exposures, while assuring that no additional Servicing Carriers become oversubscribed in the process.~~

~~(3) If after all of the petitioning Servicing Carrier’s eligible ERPs have been reassigned, but subscription relief cannot be completed because the only ERPs left to reassign produce entire books of business that would cause either the petitioning Servicing Carrier’s subscription level to drop below 100% or the~~

~~recipient Servicing Carrier's subscription level to exceed 100% of its "ought to have" share, further relief will be granted by reassigning exposures to the most undersubscribed Servicing Carrier by utilizing garaging towns. The supplementary relief process will include the following:~~

~~(a) CAR will randomly reassign the garaging towns of a randomly selected ERP to the most undersubscribed Servicing Carrier.~~

~~The reassignment process will be in accordance with Sections C.2.b.(1) (2) of this Rule, substituting garaging town in place of an entire ERP as the unit of assignment. CAR will recalculate subscription levels for all Servicing Carriers after the reassignment of each individual garaging town, until the petitioning Servicing Carrier's subscription level is reduced to as close to 100% as possible without going below 100% of its "ought to have" number of ERP exposures.~~

~~(b) The individual garaging towns reassigned to a Servicing Carrier through the multiple Servicing Carrier relief process will function as an independent ERP assignment on a going forward basis.~~

~~(c) Each Servicing Carrier writing business with a multiple Servicing Carrier ERP is required to monitor the process by ensuring that the policies it writes are only from the garaging town(s) it has been assigned.~~

~~e. ERPs or individual garaging towns so reassigned by CAR will be reimbursed by the petitioning Servicing Carrier at a rate of \$15 per exposure based on a count of the ERP exposure as statistically reported to CAR for the most recent twelve (12) month period at the time of reassignment.~~

~~d. If an ERP or individual garaging town was assigned or reassigned within the previous thirty-six (36) months, that ERP or individual garaging town of an ERP will not be randomly reassigned, and another random selection shall be made from the oversubscribed Servicing Carrier's remaining ERPs unless this provision precludes an oversubscribed Servicing Carrier from obtaining subscription relief, in which instance an ERP or an individual garaging town of~~

~~an ERP may be reassigned notwithstanding having been assigned or reassigned within the previous thirty-six (36) months.~~

~~3. Subscription Methodology—Commercial~~

~~a. For Policies Effective January 1, 2006 and Subsequent~~

- ~~(1) Each producer that has an assignment to a commercial Servicing Carrier on December 31, 2005 shall be assigned to one of the limited number of commercial Servicing Carriers appointed to issue policies effective January 1, 2006 and subsequent. Such assignments will be made to provide equitable distribution among all those carriers based upon CAR's review of premium volume and agency loss ratio by major commercial class, with an effort to minimize market disruption.~~

C. Exclusive Representative Producer Assignment Methodology

1. Servicing Carriers shall receive appointments of newly applying producers on a rotational basis.

2. Subsequent to the original assignments, CAR will perform annual quarterly reviews of the distribution of ceded commercial written premium and, if necessary, may perform a redistribution of residual market books of business to maintain equity among Servicing Carriers. Any such redistribution shall occur no sooner than 60 calendar days from the date of review. If a redistribution is performed, any subsequent redistribution shall not occur for at least 12 reporting months after the effective date of the previous redistribution. will make such periodic adjustments to the distribution of commercial business as the Governing Committee determines is necessary to ensure that no individual carrier is unduly burdened.

~~(2) Two and three party agreements with an ERP and a commercial Servicing Carrier will not be permitted.~~

~~(3) An applicant for an ERP assignment to a commercial Servicing Carrier will be assigned to a commercial Servicing Carrier on a rotational basis pursuant to Section C.3.a.(1) of this Rule.~~

~~b. For Policies Effective Prior to January 1, 2006~~

~~(1) A Servicing Carrier's "ought to have" ERP subscription level will be based upon its voluntarily written (non-ERP) market~~

~~share. Further defined, a Servicing Carrier's "ought to have" volume of ERP written premium will be equal to that Servicing Carrier's actual percentage of the total Servicing Carrier non-ERP market multiplied by the sum of all Servicing Carriers' ERP written premium.~~

~~A Servicing Carrier's over/under subscription level is arrived at by subtracting its own volume of ERP written premium from its "ought to have" volume of ERP written premium as defined above.~~

~~Subscription order will be based on each Servicing Carrier's variance from its "ought to have" ERP written premium dollars.~~

~~(2) Two party agreements with an ERP of a Servicing Carrier which has less than 100% of its "ought to have" written premium will not be permitted. Three party agreements providing for an ERP to go from its present Servicing Carrier to a less subscribed Servicing Carrier are permitted.~~

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~~

1a. 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 does not have has not been appointed as a commercial Exclusive Representative Producer (ERP) appointment to one of the Member Companies which has been selected by the Governing Committee appointed 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 eligibility criteria provisions of Section A.4. 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 ERP. Such The Servicing Carriers shall provide service to such Exclusive Representative Producers ERPs under substantially the same contractual terms and conditions governing their normal its voluntary producer relationships.~~

~~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 a~~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 ~~m~~Motor ~~v~~Vehicle ~~i~~Insurance business on behalf of a Servicing Carrier, or (2) requests cancellation of a voluntary agreement for ~~m~~Motor ~~v~~Vehicle ~~i~~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 fails to fulfill any of the producer requirements specified in Section B.1.~~ is ineligible for appointment to a Servicing Carrier as an ~~Exclusive Representative Producer~~ ERP.

2b. Affiliated Producers

~~(a.1)~~ If ~~an producer applying applicant~~ for a ~~private passenger~~ appointment ~~to represent a Servicing Carrier as an ERP 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 contractual relationship or membership in a so-called producer cluster or network, or a direct or indirect material and continuing proprietary or management interest in another agency or brokerage firm which ~~also has an ERP voluntary (Representative Producer) or involuntary (Exclusive Representative Producer) appointment to a Servicing Carrier for the same type of business or vice versa, the~~ such 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. A producer who applies for an ERP appointment and who is determined to have an affiliated relationship, will be appointed to the same Servicing Carrier as all members of the affiliated group. Existing ERPs identified as having an affiliated relationship will be appointed to the same Servicing Carrier as all members of the affiliated group.~~

~~The formation of an affiliated group for the sole purpose of placing commercial Motor Vehicle Insurance business is prohibited.~~

~~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.e., 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.~~

~~(b.3)~~ An applicant producer applying for an commercial ERP appointment must identify any affiliated relationships that relate to commercial Motor Vehicle Insurance business at the point of application. An existing commercial ERP must notify its Servicing Carrier and CAR of any new affiliated relationship, or change in affiliated status within ~~thirty (30)~~ days of such change.

~~(c.4)~~ Annually, ~~as of the commercial ERP appointment date, each upon request by a Servicing Carrier, an ERP will be required to must~~ furnish its Servicing Carrier with a completed updated information relative to its affiliated relationships or change in affiliated status for commercial Motor Vehicle Insurance business. agency disclosure form.

~~(d.5)~~ The Servicing Carrier may terminate an ERP appointment for ~~failure to furnish the completed provide the requested~~ affiliated agency disclosure information. 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) days~~ written notice, and shall be ineligible for appointment to a Servicing Carrier for a period of two years commencing on the effective date of the termination. If the requested information is provided prior to the expiration of the 30 days, the ERP's appointment will be reinstated.

~~(e.6)~~ Any applicant or existing ERP aggrieved by ~~staff's~~ CAR's determination of its affiliated status may appeal to the Governing Committee pursuant to Rule 20 and may present evidence to refute that determination. ~~If the applicant is successful, in refuting that determination, it the applicant will~~ be appointed to a Servicing Carrier pursuant to Rule 13.C. under the same terms and conditions as an Exclusive Representative Producer.

~~e. 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.~~

d3. Sale of Exclusive Representative Producer Business

~~If a producer which has an Exclusive Representative Producer ERP 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 in Section A.4. and production and market need criteria in Section C. of this Rule, notwithstanding the location of the seller's place of business. If the Exclusive Representative Producer appointment was in a Any probationary status, of the ERP appointment, resulting from failure of the ERP to maintain eligibility requirements or failure to develop and maintain the established minimum written premium volume requirement as respects the above requirements or criteria, that status will carry over to the purchaser of this the business.~~

If the sale does not result in the continuation of the appointment to the seller's² 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 additional insureds, adding named operators onto the existing policy, endorsing coverage limits, providing all notices required by law, ~~claims processing claims and collecting 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~~4. Eligibility Requirements

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

~~a.(1)~~ ~~has~~ ~~e~~Completed a course of study, approved by the Commissioner of Insurance, which concentrates on the commercial Massachusetts ~~m~~Motor ~~v~~Vehicle ~~i~~Insurance system;

~~b.(2)~~ ~~has~~ ~~a~~Attained a passing grade on a written examination based on material covered in the approved course;

~~c.(3)~~ ~~has~~ ~~w~~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 Member, 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.~~

~~d.(5)~~ ~~for commercial appointments,~~ ~~h~~Has an existing commercial relationship with a ~~non-~~ Member other than a 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 pursuant to Section C.1. D.3. Continued eligibility is dependent upon compliance pursuant to the provisions of Section C.1. D.3.

~~(6)~~ Having satisfied the preceding criteria the applicant must conclusively show that ~~he or she~~ such applicant:

~~(a.)~~ is applying in good faith;

~~(b.)~~ will operate from an established location in Massachusetts, except licensed nonresident producers in a state contiguous

to Massachusetts 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/or suspended;

~~(f.)~~ has not ~~been involved in a~~ materially and or substantially breached ~~of~~ a contract between with a Member Servicing Carrier and a producer;

~~(g.)~~ is not in default ~~in~~ on the remittance of any ~~m~~Motor ~~v~~Vehicle Insurance 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~~ ERP and the Servicing Carrier, and the applicable regulations of the Division of Insurance;

~~(i.)~~ agrees to notify CAR and the appointed 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~~ ERP appointment assignment within the preceding ~~sixty~~ (60) days, ~~said~~ unless the declination ~~was 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~~ ERP appointment terminated assignment rescinded or cancelled by a Servicing Carrier pursuant to Section EH., ~~or been~~

~~terminated as an Exclusive Representative Producer for failure to meet minimum production criteria or market need as provided in Rules 14.C and D. within the preceding twenty-four (24) months, unless the termination was 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 an ERP producer which has an Exclusive Representative Producer appointment to a Servicing Carrier to fulfill the following requirements ~~as well as~~ and maintain the eligibility criteria pursuant to Rule Section A.4.2.e.

~~Failure to do so will be grounds for termination of said appointment.~~

- a. Maintain a valid producer's license as issued by the Division of Insurance.
- b. Collect, process and remit premium due a Servicing Carrier in accordance with the provisions of the Rules of Operation.
- c. Refrain from engaging in fraudulent activity in connection with the business of Motor Vehicle Insurance.
- ad. Submit for Require of all new applicants for insurance that they complete in its entirety a new business application for insurance, completed in its entirety, and a signed premium finance application/agreement, if applicable within two business days;
- e. Provide a reasonable and good faith effort to verify the information provided by the applicant, including rating and licensing data;
- bf. Report all coverage bound and all registrations/~~titles~~ certified to the Servicing Carrier within two working business days after binding coverage or certifying a registration;
- eg. Verify that the applicant has not been in default in the payment of any Motor Vehicle Insurance premiums in the past ~~twelve (12)~~ 24 months;

- ~~dh.~~ Comply with ~~the reasonable~~ written procedures supplied by the Servicing Carrier for processing claims, remitting premiums and requesting coverage;
- ~~ei.~~ 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;
- ~~fj.~~ Remit payments Forward all premium payments to a Servicing Carrier within two business days of receipt on a timely basis in accordance with the provisions set forth in the contract between the Servicing Carrier and the Exclusive Representative Producer, ~~hH~~ 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 directly 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 previously failed to perform its commitment ~~previously~~;
- ~~gk.~~ Notify the Servicing Carrier of any suspected fraud ~~surrounding a loss~~;
- ~~hl.~~ Cooperate with the Servicing Carrier and CAR ~~personnel~~ during all audits and investigations;
- ~~im.~~ Properly order endorsements;
- ~~jn.~~ Order only those coverages from the Servicing Carrier that are requested by the insured; and for which ~~he~~ the insured is may be eligible;
- ~~ko.~~ Quote proper premiums based on information provided by the applicants for the coverage desired;
- ~~lp.~~ Conduct all monetary transactions with the insured and the Servicing Carrier as required by the Rules of Operation and the ~~Exclusive Representative Producer~~ ERP contract;

~~mq.~~ Advise Notify the premium finance company and/or the insured that premium checks ~~for premiums~~ for all financed accounts are to be made payable to the Servicing Carrier;

~~nr.~~ Retain the necessary documentation of Servicing Carrier transactions in accordance with the Manual of Administrative Procedures;

~~os.~~ Notify the applicant for insurance that he has the option of utilizing an Installment Payment Plan;

~~pt.~~ Comply with ~~the Automobile Insurance Bureau Form 2-A~~ appropriate notification Procedures relative to the transfer of Motor Vehicle Insurance coverage to another Member. ~~use of the Notice of Transfer of Insurer form.~~

~~qu.~~ Develop and maintain a book of business ~~as required in~~ pursuant to paragraphs Section 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.~~

~~v.~~ Adhere to any directive issued by the Commissioner relative to the charging of service fees.

w. Provide the Servicing Carrier and CAR with affiliated agency disclosure information pursuant to Sections A.2.b. and c.

x. Comply with all of the conditions set forth in the contract between the ERP and the Servicing Carrier.

y. Comply with all of the provisions of the Rules of Operation and the Manual of Administrative Procedures.

2. Grounds for Termination

a. Immediate Termination

The following shall be cause for a Servicing Carrier to immediately terminate an ERP's contract and the authority to bind coverage on behalf of a Servicing Carrier.

(1) Failure to maintain a valid producer's license as issued by the Division of Insurance.

(2) Willful misappropriation of premium due a Servicing Carrier in accordance with the provisions of the 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.

b. Termination with a 30-Day Notice

Failure to fulfill the requirements in Sections B.1.d. through B.1.y. shall be cause for a Servicing Carrier to terminate an ERP's contract and the authority to bind coverage with 30 days written notice of termination.

3. An ERP terminated pursuant to Section B.2. shall have its MAIP Assigned Risk Producer certification revoked commencing on the effective date of the termination in accordance with Rule 31.D.3.

~~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.~~

CD. 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.~~

~~13. Beginning with evaluations occurring on January 1, 2006 and thereafter, Exclusive Representative Producers appointed for commercial motor vehicle business, An ERP who fails to develop and maintain the following minimum commercial Motor Vehicle Insurance written premium volume requirements will be terminated. Total written premium includes all agency commercial Motor Vehicle Insurance written premium, voluntary and ceded combined.~~

<u>Months after Appointment</u>	<u>Minimum Volume Requirement (Total Written Premium)</u>
<u>12</u>	<u>\$10,000</u>
<u>24</u>	<u>\$20,000</u>
<u>36</u>	<u>\$30,000</u>
<u>Subsequent Evaluations</u>	<u>\$30,000</u>

~~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.~~

~~An ERP's book of business will be evaluated on an annual basis by the Servicing Carrier with a copy of the evaluation provided to the ERP and to CAR within 15 days of the evaluation date.~~

~~The effective date of termination shall be one year after the evaluation date on which the ERP failed to develop or maintain the applicable minimum book of business. If, during that year, the ERP obtains and maintains the applicable minimum book of business, the termination process shall be suspended but the ERP shall continue to be subject to annual evaluations.~~

~~42. An ERP Exclusive Representative Producer terminated under the provisions of this Section C. 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, t~~The term ~~Exclusive Representative Producer ERP, for purposes of this paragraph,~~ includes any licensed producer and any other newly emerging producer with whom or which the terminated ~~Exclusive Representative Producer ERP~~ 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.~~

DG. 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, ~~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, §3(8). 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~~ applicant's ~~m~~Motor ~~v~~Vehicle ~~i~~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 ~~m~~Motor ~~v~~Vehicle ~~i~~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 ~~m~~Motor ~~v~~Vehicle ~~i~~Insurance policy.
2. Nothing set forth in the provisions of Section ~~GD.1. above~~ is intended to prohibit producers from charging ~~runners courier~~ fees and other non-insurance related fees if the following requirements are met;
- a. The producer provides to the ~~insured-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 ~~insured-applicant~~ that there is no obligation to purchase the non-insurance related service and that the insured may obtain ~~m~~Motor ~~v~~Vehicle ~~i~~Insurance through the producer, notwithstanding the insured's decision not to purchase the non-insurance related services;
- c. The ~~insured applicant~~, after having been apprised of the information set forth in Sections ~~GD.2.a. and GD.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 applicant~~ pursuant to which the producer provides non-insurance related services to the ~~insured applicant~~ if the producer complies with all of the requirements of Sections ~~D.1. and GD.2. above.~~ In the event the producer and ~~insured applicant~~ execute such a "service contract", the producer shall give ~~to~~ the ~~insured applicant~~ 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.

EH. **Appointment Ineligibility**

1. ~~Any ERP that licensed property and casualty producer who within the preceding twenty-four (24) month period has had an Exclusive Representative Producer assignment appointment terminated rescinded or cancelled by a Servicing Carrier for failing to satisfy any of the requirements specified in Section B.1. or for failing to maintain eligibility pursuant to Section A.4. shall be ineligible for reappointment for a period of two years commencing on the effective date of the termination. 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.~~

~~A licensed property and casualty producer whose appointment If a voluntary agent has been terminated by a Member his or her voluntary Servicing Carrier as a consequence of any of the above acts or omissions failing to satisfy any of the requirements of Section B.1.; or failing to maintain eligibility pursuant to Section A.4. that former voluntary agent will be ineligible for appointment as an Exclusive Representative Producer ERP for a period of two (2) years commencing on the effective date of the termination.~~

2. ~~If the certification of a MAIP Assigned Risk Producer has been revoked by CAR for violations of any obligation(s) delineated in Rule 31 and having exhausted the appeal rights pursuant to Rule 40, the producer is ineligible for the appointment or continuation of its ERP 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.~~

~~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~~ ERP terminated for failure to meet minimum production criteria pursuant to Section ~~DC~~, ~~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 ERP~~ for a period of two (2) years commencing on the effective date of the termination.

4. ~~For purposes of this section, t~~The term ~~Exclusive Representative Producer ERP, for purposes of Section E.,~~ includes any licensed producer and any other newly emerging producer with whom or which the terminated ~~Exclusive Representative Producer ERP~~ 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.~~

F. Review/Relief of ERP Termination

A terminated ERP may request that the termination be reviewed by CAR.

A completed "Request for Review/Relief" form must be received by CAR within 30 calendar days of the delivery of the termination notice. A review by CAR's Market Review Committee will be held within 15 business days of the date of CAR's receipt of the completed "Request for Review/Relief" form unless such requirement is waived by the aggrieved ERP. The receipt by CAR of such form will stay the ERP's termination until the ERP has exhausted all appeal rights pursuant to Rule 20. However, any reviewing committee may lift the stay if such stay is not in the best interests of the motoring public.

During the period of stay, operational procedures identified by the Servicing Carrier in the termination letter will remain in effect until reviewed by the Market Review Committee. The Market Review Committee may approve, modify or disapprove the operational procedures.

A. Deposit Premium and Fees

1. ~~The An~~ Exclusive Representative Producer (ERP) shall remit all collected premium payments to the Servicing Carrier within two business days of receipt. ~~in accordance with the contract signed with the Servicing Carrier.~~ In no event shall the required premium deposit on new or renewal business be greater than 30% of the applicable annual premium for the coverages requested ordered. ~~However, a~~Any Eligible Risk whose Motor Vehicle Insurance policy that had has been cancelled for non-payment of insurance premiums during the preceding 24 months may be required to pay 100% of the policy premium before insurance is bound, ~~provided, however, that no insurance company shall be required to issue such policy or execute such bond if the applicant or any person who usually drives the motor vehicle has an uncured default in the payment to an insurance company of any motor vehicle insurance premiums due or contracted during the preceding 12 months.~~

2. Acceptance of payment by an ERP shall be deemed payment to the Servicing Carrier.

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

~~All premiums collected by the ERP on behalf of the Servicing Carrier as a result of direct billing must be forwarded to the Servicing Carrier within two business days after receipt by the ERP of the premium.~~

B. Defaulted Premium

1. No Servicing Carrier shall be required to issue a Motor Vehicle Insurance policy if the applicant is in default of the payment to an insurance company of any Motor Vehicle Insurance premiums due or contracted during the preceding 24 months.

2. If the Servicing Carrier issues a cancellation notice for non-payment of premium to the policyholder and the policyholder's remittance received by the Servicing Carrier 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 non-payment of premium.

3. In the event of a default resulting in a termination of an ERP, a Servicing Carrier may petition CAR for reimbursement on account of the

default of that ERP. A determination on reimbursement to the Servicing Carrier will be made by the Governing Committee or its designee, The Governing Committee, after reviewing the recommendations of the Defaulted Brokers Committee, will determine if the Servicing Carrier is entitled to reimbursement in accordance with the criteria specified established in the Manual of Administrative Procedures.

A. Servicing Carrier Terminations

1. Voluntary Terminations

~~Any Servicing Carrier company~~ may petition the Governing Committee requesting termination as a commercial Servicing Carrier ~~for CAR~~. The Servicing Carrier shall be required to provide advance notice in writing to the Governing Committee ~~of CAR~~. Such notice shall be sent to the Chairman of the Governing Committee in care of ~~the CAR's President, office~~. The President of CAR shall confirm in writing to the sender the receipt of the notice of termination as a Servicing Carrier.

The advance notice of termination shall specify a period of time date, ~~no less than 6 months for private passenger business and no less sooner~~ than 12 months ~~for commercial business~~ from the date notice is received by CAR or such earlier time as the parties shall mutually agree, when the terminating Servicing Carrier will cease accepting new applications.

The terminating Servicing Carrier will, in its letter notice of termination ~~of association as a Servicing Carrier for CAR~~, affirm its commitment to continue to provide service as required by the Plan, and Rules of Operation, and the Manual of Administrative Procedures, on all existing policies and those policies written in the notice period until the expiration following the effective date of termination, unless the parties shall have mutually agreed to other arrangements for the servicing of such policies.

2. ~~Servicing Carrier~~ Terminations by CAR

a. ~~Private Passenger~~

~~In the event that it becomes necessary for the Governing Committee to terminate the association of a Servicing Carrier with CAR, such notice shall be given in writing by the Chairman of the Governing Committee to the Chief Executive Officer of the Servicing Carrier. Such notice shall specify a period of time no less than six months or such earlier time as the parties may mutually agree, at which time the Servicing Carrier will no longer be authorized to accept new business on behalf of CAR.~~

~~The notice to the terminating Servicing Carrier will further stipulate that the Servicing Carrier will be expected, in good faith, to the best of its ability continue to provide service on existing policies as required under the Rules of Operation until the expiration date following the effective date of the termination notice unless the parties shall have mutually agreed to other arrangements for the service of such policies.~~

~~Upon receipt of the notice of termination of association by a Servicing Carrier to CAR or upon notice by the Governing Committee of the termination of association with a Servicing Carrier, the Chairman of the Governing Committee will notify within 10 days all the Servicing Carriers of the action and solicit from them such information as is needed to make a determination of the remaining Servicing Carriers' capacity to serve the segment of the insuring public and those Representative Producers served by the terminating carrier. All Servicing Carriers are required to respond within 30 days from the date of the request.~~

~~Upon receipt of the response from the remaining Servicing Carriers, the Governing Committee shall determine if the remaining carriers have adequate capacity to serve the departing Servicing Carrier's customers and Representative Producers in accordance with the performance standards for a Servicing Carrier.~~

~~Upon determining that adequate capacity does exist among the remaining Servicing Carriers, the Governing Committee may direct the President of CAR to proceed with the process of reassignment of Representative Producers.~~

~~Should the Governing Committee of CAR find that the remaining Servicing Carriers are unable to service the departing Servicing Carrier's customers and Representative Producers then the Governing Committee shall, from the companies which have met all of the standards for a Servicing Carrier, appoint that carrier or carriers it deems can best serve the consumer and Representative Producers on behalf of CAR.~~

~~The Governing Committee, if it deems it necessary, may extend a general invitation to all insurers who believe they can meet the requirements for a Servicing Carrier as outlined in the Rules of Operation to apply for appointment.~~

~~Upon determination of new eligible candidates as Servicing Carriers and upon determination of those existing carriers with additional capacity by the Governing Committee, a complete list of those Servicing Carriers shall be utilized in the carrying out of those activities required to facilitate a reappointment of Representative Producers assigned to the departing Servicing Carriers. However, the Plan requires that there shall be no fewer than 20 Servicing Carriers participating in the Plan at all times.~~

~~b. Commercial~~

~~For policy years 2006 and subsequent, a~~An appointment as a Servicing Carrier for ~~C~~commercial Motor Vehicle Insurance business will be for ~~a the time period eertain,~~ specified in the letter of appointment, and will automatically terminate on the date specified in the original appointment, unless ~~sooner~~ extended or ~~sooner~~ terminated by the Governing Committee ~~of CAR.~~

In the event that it becomes necessary for the Governing Committee to terminate ~~the association of~~ a Member as a Servicing Carrier, ~~with CAR,~~ such notice shall be given in writing by the Chairman of the Governing Committee to the Chief Executive Officer of the Servicing Carrier. Such notice shall specify a ~~period of time date~~ no less sooner than 12 months ~~hence from the date of the notice~~ or such earlier time as the parties may mutually agree, at which time the Servicing Carrier will no longer be authorized to accept new business on behalf of CAR. The notice to the terminating Servicing Carrier will further ~~stipulate state~~ that the Servicing Carrier will be expected, in good faith, to the best of its ability to continue to provide service on existing policies as required under the Plan and Rules of Operation and the Manual of Administrative Procedures until the expiration date following the effective date of the termination notice unless the parties shall have mutually agreed to other arrangements for the service of such policies.

The Governing Committee shall determine whether there will be an equitable distribution of the terminated Servicing Carrier's commercial business among the remaining Servicing Carriers, or if it will be necessary to select a new Servicing Carrier through the Request for Proposal for Massachusetts Residual Market Commercial Automobile Business bid process, pursuant to the provisions of Rule 13.A.

In the event any Servicing Carrier experiences unanticipated or unusual operational difficulties that would impair its ability to continue to meet the established Servicing Carrier commercial 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 motoring public and the industry would be better served.

Nothing in this Section shall in any manner be deemed to act to modify or reduce a Servicing Carrier's responsibilities or obligations under the Plan, and Rules of Operation, or the Manual of Administrative Procedures.

34. Terminations by the Commissioner

The Commissioner may terminate any Servicing Carrier which he determines to have violated the standards established for Servicing Carriers in these Rules, or the Plan, or if he finds that the operation or financial stability of such Servicing Carrier presents a danger to the interests of policyholders or the continued operation of CAR or will create substantial market disruption.

43. ~~Approval by the~~ Commissioner Approval of Servicing Carrier Voluntary Terminations ~~and Terminations by CAR~~

No termination of a Servicing Carrier will become effective until approved by the Commissioner. In granting his approval, the Commissioner will consider the impact of such termination on policyholders, producers agents and brokers, and the market for commercial Motor Vehicle Insurance market.

B. Representative Producer Terminations

1. Voluntary Terminations

~~Any Representative Producer or Exclusive Representative Producer~~ (ERP) producer requesting termination as an Exclusive Representative Producer (ERP) of a Servicing Carrier ~~of CAR~~ shall be required to provide 30 days advance written notice to the Servicing Carrier and CAR.

The terminating ~~Representative-Producer-or~~ ERP shall return all Servicing Carrier forms, manuals and certification stamp(s), as well as all materials supplied by a Servicing Carrier at such time as the termination becomes effective.

2. Producer Terminations by a Servicing Carrier

~~Grounds for t~~Termination of an ~~an Representative-Producer-or~~ ERP shall be governed provided pursuant to by Rules 13 and 14.

~~A. Private Passenger Ceding Expense Allowances~~

~~1. For ceded business written for calendar years 1994 and later, Servicing Carriers shall receive credit against their premiums written account (excluding ceded premium for Antique Vehicles with policy effective dates of November, 1998 and subsequent) for expenses as follows:~~

~~a. For all private passenger motor vehicle business, Commission and Brokerage expenses, Direct Writer Selling expense, and Premium Taxes shall be reimbursed on an actual incurred basis, but in no case can they be greater than the allowance provided in the Commissioner's annual Decision on Private Passenger Automobile Insurance Rates.~~

~~b. For all private passenger motor vehicle insurance business, Unallocated Claim Adjustment Expenses, Other Acquisition, including Field Supervision and Collection Expenses, and General Expenses shall be reimbursed at the actual allowance provided in the Commissioner's annual Decision on Private Passenger Automobile Insurance Rates. Each Servicing Carrier's expense allowance shall be adjusted by the ratio of its claim frequency and other appropriate factors for ceded business to the claim frequency and other appropriate factors for all ceded business.~~

~~Each Servicing Carrier's expense allowance shall be determined as a percent of its ceded premium written, based upon the percent of the statewide average rate which is represented by the aforementioned expense components.~~

~~Separate computations shall be made for the liability pool and for the physical damage pool.~~

~~Interim ceding expense allowances for each Servicing Carrier for a particular calendar year will be determined using the procedure outlined above utilizing the applicable expense components provided in the Commissioner's annual Decision on Private Passenger Automobile Insurance Rates, in conjunction with exposures and the adjustment based on claim frequency and other appropriate factors described in A.1.b. above for the most recent calendar year available.~~

~~Annually, interim expense allowances will be trued-up to reflect the actual incurred expenses for that calendar year as described in~~

~~A.1.a. above, and to reflect the exposure and adjustment for claim frequency and other appropriate factors described in A.1.b. above for that calendar year.~~

~~Interim ceding expense allowances for each Servicing Carrier for a particular calendar year will be determined using the procedure outlined above utilizing the applicable expense components provided in the Commissioner's annual Decision on Private Passenger Automobile Insurance Rates, in conjunction with exposures and the adjustment based on claim frequency and other appropriate factors described in A.1.b. above for the most recent calendar year available.~~

~~B. Commercial Ceding Expense Allowance~~

~~1. Expense Allowances on Ceded Business (Excluding Taxi, Limousine and Car Service Business)~~

~~For ceded commercial business, written for calendar years 1995 and later, (except for taxi, limousine and car service business written through CAR's Taxi and Limousine Program); Servicing Carriers shall receive a credit against their premium written account for the expenses noted in A. and B. below. Each Servicing Carrier's expense allowance shall be determined as a percent of its ceded premium written, based upon the percent of the average rate which is represented by these expense components.~~

~~Separate computations shall be made for the liability pool and for the physical damage pool. Both interim and final expense allowances will be credited to the Servicing Carrier as a percentage of written premium through the Commonwealth Automobile Reinsurers' quarterly settlement of balances procedure.~~

~~a. Calendar Years 2006 and Subsequent~~

~~A. (1) Premium Tax and Commission~~

Servicing Carriers will be reimbursed for premium tax and commissions according to the approved ~~Commonwealth Automobile Reinsurers'~~ CAR commercial rate filing for the corresponding policy year. For policy years where a commercial rate filing is not filed and/or not approved, the

premium tax and commission allowance will remain unchanged from the prior year.

~~An off-balance factor shall be applied to each Servicing Carrier's aforementioned rate components in order to disburse all of the expenses provided for by the expense components contained in CAR's Commercial Automobile Rates.~~

~~B.(2)~~ Other Expenses

On both an interim and final basis, Servicing Carriers will be reimbursed for Other Expenses including, but not limited to, ~~ULAE~~ unallocated loss adjustment expenses; ~~Other Acquisition, including Field Supervision and Collection Expenses,~~ and ~~G~~general company ~~E~~expenses according to the allowance as determined through the review and selection process associated with the Request for Proposal for Massachusetts Residual Market Commercial Automobile Business. ~~limited servicing carrier bid review and selection process and approved by the Governing Committee.~~

~~b. Calendar Years 1995 through 2004~~

~~(1) Premium Tax and Commission~~

~~Commission and Brokerage expenses, Direct Writer Selling Expenses and Premium Taxes shall be reimbursed on an actual incurred basis, but in no case can they be greater than the allowance provided in the Commissioner of Insurance's annual Decision on the CAR Commercial Rate Filing.~~

~~An off-balance factor shall be applied to each Servicing Carrier's aforementioned rate components in order to disburse all of the expenses provided for by the expense components contained in CAR's Commercial Automobile Rates.~~

~~(2) Unallocated Loss Adjustment Expenses (ULAE), Company and General Expenses~~

~~Unallocated Loss Adjustment Expenses, and Company Expense, including Other Acquisition, Field Supervision and Collection Expenses, Other Taxes Licenses and Fees and All Other General Expenses shall be reimbursed at the allowance~~

~~provided in the Commissioner of Insurance's annual Decision on the CAR Commercial Rate Filing, adjusted by each Servicing Carrier's ratio of its claim frequency and other appropriate factors for ceded business, written by the Servicing Carrier, to the claim frequency and other appropriate factors for all ceded business.~~

~~To distribute all available expense dollars as provided for in CAR's Commercial Automobile Rates, an off-balance procedure shall be applied to the above adjusted expense components.~~

~~(3) Interim Ceding Expense Allowances~~

~~Interim ceding expense allowances provide expense reimbursement to Servicing Carriers on a temporary basis, pending determination of final ceding expense allowances. Interim ceding expense allowances for each Servicing Carrier shall be determined using the procedure outlined above. The applicable expense components provided in the Commissioner of Insurance's annual Decision on CAR's Commercial Rate Filing, in conjunction with the claim frequency and off-balancing adjustments described in (1) and (2) above for the most recent calendar year available shall be utilized.~~

~~Annually, interim expense allowances will be trued-up to reflect the actual incurred expenses, capped and off-balanced for that calendar year as described in (1) above, and to reflect the claim frequency and other appropriate factors and off-balancing adjustments described in (2) above for that calendar year.~~

~~2. Taxi, Limousine and Car Service Ceding Expense Allowances~~

~~For taxi, limousine and car service business written through CAR's Taxi and Limousine Program, expense allowances will be reimbursed to Servicing Carriers as follows. Interim and final expense allowances will be credited to the Servicing Carrier as a percentage of written premium through the Commonwealth Automobile Reinsurers' quarterly settlement of balances procedure.~~

~~a. Premium Tax and Commission~~

~~Servicing Carriers will be reimbursed for premium tax and commissions according to the approved Commonwealth Automobile Reinsurers' rate filing for each class for the corresponding policy year. For policy years where a CAR rate filing is not filed and/or approved, the premium tax and commission allowance will remain unchanged from the prior year.~~

~~b. Unallocated Loss Adjustment Expenses (ULAE), Company and General Expenses~~

~~Servicing Carriers will be reimbursed for ULAE expenses; other acquisition, including Field Supervision and Collection Expenses; and General Expenses according to the per unit allowance for each classification for each policy year of appointment, as determined through the taxi and limousine bid review and selection process and approved by the Governing Committee.~~

C.e. Interim Ceding Expense Allowances

~~Interim expenses will be based on the ratio of the agreed upon per unit allowance for each policy year of the Servicing Carrier's appointment, separately for taxi and limousine property damage liability exposures, to the average taxi and limousine premium as approved in CAR's commercial rate filing for the corresponding policy year.~~

~~Interim expenses will be calculated as a percentage of written premium to be estimated based on the agreed upon per unit allowance and the estimated average written premium.~~

Annually, interim expenses will be trued-up based on the agreed upon per unit allowance multiplied by the ceded property damage liability exposures statistically reported for the corresponding policy year.

~~3. Cession Limitation~~

~~For policy years 2003 through 2005, in order to maintain a viable voluntary market, a cession limitation will be applied to Commercial Motor Vehicle insurance classifications rated according to manuals approved by the Commissioner of Insurance pursuant to G.L. c. 175E (Competitive Rating) and written during a policy year by a Servicing Carrier.~~

~~The limitation will be stated as a percentage of the written premium reported to CAR by the Servicing Carrier.~~

~~a. Cession Limitation Exclusions~~

~~(1) Business written through involuntarily assigned Representative Producers and ceded to CAR will be excluded from the cession limitation.~~

~~(2) For policy years 2003 through 2005, ceded premiums for the following classifications will be excluded from the calculations:~~

Exclusion Criteria		
Classification Description	Policy Year (s)	Statistical Code
Contract Carriers		
Hauling Chemicals	2003-2005	###230
Hauling Petroleum or Petroleum Products		###270
All Other		###290
Petroleum Business	2003-2005	###920
Long-haul Truckers		
Non-fleet	2003-2005	##32##
Fleet		##62##
Emergency Vehicles		
Emergency Ambulances	2003-2005	791300
Fire Department		790800, 790900
Law Enforcement		791100, 791200, 794200
School Buses	2003-2005	61##00, 62##00
Buses N.O.C.	2003-2005	53##00, 54##00, 55##00, 58##00
Limousines	2003-2005	42#900
Car Service	2003-2005	43#900
Truckers Cost of Hire	2003-2005	661300
Chemical Manufacturers	2003-2005	###110

Exclusion Criteria		
Classification Description	Policy Year(s)	Statistical Code
<u>Garage</u> Non-franchised Dealers Repair Shops	2003-2005	735100, 735200 780800, 781000, 781100, 781200, 781300
<u>Taxicabs</u> Fleet Non-fleet	2003-2005	418700, 419700, 410700, 418800, 419800, 410800, 418900, 419900, 410900 415700, 416700, 417700, 415800, 416800, 417800, 415900, 416900, 417900
Van Pools	2004-2005	411###, 412###
<u>Zone Rated Bus</u> Fleet Non-Fleet	2004-2005	520900, 560900 527900, 567900
<u>Specialized Delivery</u> Armored Cars	2004-2005	###410
Church Bus	2004-2005	638#00, 639#00, 630#00, 635#00, 636#00, 637#00
<u>Social Services Automobile</u> Employee Operated All Other	2004-2005	64##### 65#####
<u>Short Term Leasing or Rental</u> <u>Concerns</u> Private Passenger Autos Miscellaneous Types	2004-2005	721400 721600
Bobtail Operations	2004-2005	748900
Ambulance Services—Non Emergency	2004-2005	791400
<u>Driver Training Programs</u> Educational Institutions Commercial Driving Schools	2004-2005	792600 792700

~~b. Penalty for Exceeding Established Cession Limitation~~

~~If a Servicing Carrier's ceded premium for the policy year exceeds the limitation for that policy year, as noted in the chart below, a reduction in expense allowances will be applied as follows:~~

- ~~(1) For premium up to the cession limitation noted below, the expense allowance as determined by the previously identified calculations will be granted.~~
- ~~(2) For premium in excess of the cession limitation, but less than or equal to 40%, no expense allowance will be granted except for taxes, commissions, or comparable selling expenses of direct writing companies.~~
- ~~(3) For premium in excess of 40%, no expense allowance will be granted.~~

~~The following cession limitations will apply:~~

Policy Year	Cession Limitation
2003	30%
2004	30%
2005	30%

~~A. Private Passenger~~

~~The commission paid to Representative Producers, who are independent insurance agents or brokers operating under the American Agency System, on Private Passenger Motor Vehicle Insurance written on behalf of CAR shall be equal to the average percentage commission paid for risks not insured through the Plan for agents by companies which do business through independent insurance agents pursuant to the American Agency System, as determined in the rate filed by the Servicing Carrier, and such rate being approved by the Commissioner. For those Representative Producers who are not independent insurance agents or brokers operating under the American Agency System, the commission paid on business written on behalf of CAR shall be determined by the Servicing Carrier, such commissions may not exceed the average percentage commission paid for risks not insured through the Plan to agents by companies which do business through independent insurance agents pursuant to the American Agency System.~~

~~B. Commercial~~

The commission paid to Exclusive Representative Producers (ERPs) for ceded commercial business shall be as follows:

1. For those ~~agents or brokers~~ producers operating under the so-called American Agency System, the commission paid on all classes of ceded business shall be equal to the ~~commission~~ applicable percentage as contained in the commission schedule approved in conjunction with as determined in the applicable approved CAR's commercial rate filing.
2. For those ERPs that are not ~~agents or brokers~~ producers operating under the so-called American Agency System and are assigned to a Servicing Carrier ~~that is the same Carrier~~ with which the ERP also has there is a voluntary relationship, the commission will be determined by the Servicing Carrier. For all classes of ceded business the commission may not exceed the ~~commission~~ applicable percentage as contained in the commission schedule approved in conjunction with determined in the applicable approved ~~CAR~~ CAR's commercial rate filing.
3. For those ERPs that are not ~~agents or brokers~~ producers operating under the so-called American Agency System and are assigned to a Servicing Carrier with which ~~there is~~ the ERP does not have a

voluntary relationship, the commission paid on all classes of commercial business shall be equal to the ~~commission-applicable~~ percentage as ~~contained in the commission schedule determined in the applicable~~ approved in conjunction with CAR's commercial rate filing.

- 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 CAR or was an officer or employee of CAR, shall be indemnified by CAR 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. ~~However, if the person or Member except in relation to matters as to which he or it shall be~~ is adjudged in such action, suit or proceeding to be liable by reason of breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance or reckless disregard of the responsibilities in the performance of his or its duties or obligations to CAR, ~~such person or Member shall not be indemnified by CAR and, w~~With respect to any criminal actions or proceedings arising from service on the Governing Committee or on any committee of CAR or as an officer or employee of CAR, CAR shall not provide indemnification, except when such person or Member had reasonable cause to believe that his or its conduct was unlawful.

~~Such i~~Indemnification under this Section shall be provided whether or not 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 or not 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~~ Section A. of this Rule, shall be determined by the Governing Committee. ~~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 Section A. the first paragraph on this Rule shall be entitled to indemnification as authorized in Section A. 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 ~~that each~~ Member's participation ratio as determined in Rule 11. ~~deemed by the Governing Committee to be most appropriate.~~

A. **Requesting a Review**

Any ~~person, including any~~ Member, ~~or~~ licensed ~~producer agent or licensed broker~~, aggrieved by any unfair, unreasonable, or improper practice of CAR or ~~another~~ Member with respect to the operation of CAR may request a formal hearing review and ruling by the Governing Committee on the alleged practice. The request for hearing review must be made within 30 days after the date such person knew of the alleged practice. Any written material which either party wishes to have considered in connection with the deliberations of the matter should be forwarded to CAR at least five business days prior to the date scheduled for the review.

The hearing review shall be held within 15 business days after the receipt of the original request, unless such requirement is waived by the aggrieved party. ~~e~~Except as may be otherwise provided by the Governing Committee, the hearing review shall be held by a Governing Committee Review pPanel appointed by the Governing Committee, consisting of three Governing Committee members entitled to vote. The decision of this pPanel or any committee sitting at the request of or under the authority of the Governing Committee shall be rendered within 15 business days of the hearing review. The ruling of the majority of the pPanel 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. **Appealing a Ruling**

Any formal Governing Committee ruling may be appealed to the Commissioner by filing a notice of appeal with CAR and the Commissioner within 30 days after the date of the ruling's issuance. The ruling of the Governing Committee shall remain in full effect unless otherwise directed by the Commissioner. 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 review.

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.

1. A Newly Writing Company whose initial Private Passenger Motor Vehicle insurance rates and rate manual become effective prior to January 1, 2011 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.
2. A Newly Writing Company whose initial Private Passenger Motor Vehicle insurance rates and rate manual become effective on or after January 1, 2011 shall be eligible for appointment as an ARC as of the effective date of its initial rates and rate manual. The ARC shall be required to accept assignments through the MAIP on the date that MAIP processes the ARC's initial summary data submission pursuant to Rule 29.C.2.
3. 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.
4. 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. 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. At a minimum the ARC shall provide timely access to billing and claim information which will reflect current premium due, payments made, and if applicable, cancellation status and effective date, claim status and claim payments made.

2. Effective September 1, 2012, an ARC shall, for purposes of quoting an assigned Eligible Risk, provide access to its voluntary rates to ARPs by providing either web-based rating capability directly or through a third party comparative rating vendor, or by providing a dedicated toll-free telephone service for quoting purposes.

If an ARC provides access through a third party comparative rating vendor and an ARP wishes to access an ARC's voluntary rates using a third party comparative rater, (1) the ARP will contract with the third party vendor for access to the ARC's voluntary rates and request access to the voluntary rates from the ARC, and (2) the ARC will not withhold permission for gaining access to its voluntary rates for any third party vendor it supports for its voluntary agents.

After an assignment is made, the ARP will obtain from the Eligible Risk any supplemental or additional information needed by the ARC to produce the voluntary quote. The ARC shall provide the quote using the same timeframes applicable to its voluntary market quotes, but in all cases within 48 hours of the receipt of the information necessary to calculate the voluntary premium.

An ARC providing web-based rating capability shall return the voluntary premium quote to the ARP in a printable format. An ARC providing a toll-free telephone service will respond with the voluntary premium quote and include an identification number to be used to match the quote to the new business application upon receipt by the ARC.

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

The calculation of the premium assigned through the MAIP shall be based on information contained in the application. At the time the assignment is made, the ARC shall provide a form to the Eligible Risk requesting any additional or supplemental information necessary to accurately calculate the premium. The completed form shall be submitted by the ARP to the ARC with the application within two business days. If during the underwriting process an ARC discovers third-party information that appears inconsistent with the information provided on the application for insurance or is inconsistent with any supplemental information, the ARC shall: 1) initiate an inquiry either directly with the insured or through the producer of record to resolve any factual errors; and 2) obtain the insured's consent before issuing a notice of adjustment to the down payment and/or total premium. If the inquiry is made directly to the applicant, the producer of record shall be furnished a copy.

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

4. 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.

5. 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 information contained in the application for insurance and any supplemental information is accurate as to classification,

garaging, discounts, credits, vehicle use, vehicle description, and, to the extent verifiable, other rating factors;

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

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

- (1) Failure to maintain a valid producer's license as issued by the Division of Insurance;
- (2) Willful misappropriation of premium due an ARC in accordance with the provisions of the MAIP Rules of Operation;
- (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~~ forward premium payments to an ARC within two business days 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 business 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 Assigned Risk Producer Procedures Manual and the Assigned Risk Company Procedures Manual.

6. 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 Assigned Risk Company Procedures Manual.

7. Continuation of Eligibility as an ARC

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

C. Procedures for Voluntary Writing of Risks from the MAIP

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

a. Eligibility

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

b. Offer to Write

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

c. Notification to the Producer of Record

The producer of record must be mailed notification of such offer ninety 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 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 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

A duly licensed insurance producer, certified to place business through the MAIP, shall own and have an exclusive right, as the insured's producer of records, to use certain insurance information of the insured embodying the records of the insurance agency which shall include but not be limited to, the name of the insured, the policy inception date, the amount of insurance coverage, the policy number and the terms of insurance. An ARC may choose 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, 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. 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.

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 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 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 Assigned Risk Company Procedures Manual 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 Assigned Risk Company (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 Massachusetts Automobile Insurance Plan (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 12-month period worked for a minimum of 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:
 - 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 license to engage as an insurance producer revoked or suspended;

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

B. Ongoing Assigned Risk Producer Requirements and Responsibilities

It will be the ongoing responsibility of an ARP to fulfill the following requirements as well as the producer certification requirements in Section A. 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 and any additional or supplemental information for insurance through the MAIP is submitted on the prescribed forms and that each is filled out accurately and in its entirety. An application that contains information the MAIP verifies as inaccurate or an incomplete application will be returned to the

producer for remedy. Steps that the ARP must take in order to complete an application correctly include the following:

- a. The ARP must list all licensed operators in the household, including those not used for classification purposes, on the application;
- b. The ARP must verify through the Registry of Motor Vehicle Inquiry System the driver's license for each listed operator who holds a Massachusetts driver's license. The ARP must submit a photocopy of the license of any operator holding an out-of-state or an out-of-country driver's license with the new business application.
- c. The ARP must supply documentation supporting the deferral for rating purposes of any household member;
- d. The ARP must confirm each licensed operator's driving record for rating and statistical data collection purposes;
- e. The ARP must verify that the Eligible Risk has not been and is not now in default in the payment of any Motor Vehicle Insurance premiums in the past 24 months;
- f. The ARP must certify, pursuant to Rule 26.A.1.a., that the risk has made an attempt to obtain Private Passenger Motor Vehicle Insurance within 15 days of the application to the MAIP and has been turned down for such insurance;
- g. The ARP must include the full and complete address of the Eligible Risk. A post office box will not be accepted for the determination of garaging town;
- h. The ARP must verify eligibility for premium discounts through the Registry of Motor Vehicles or other appropriate sources;
- i. The ARP must order only those coverages from the ARC requested by the Eligible Risk, for which he may be eligible through the MAIP;
- j. The ARP must quote the proper MAIP premium based on information provided by the Eligible Risk for the coverage desired. The ARP must inform the Eligible Risk that the final premium

billed by the ARC may be less than the MAIP premium quoted, but it may not be more;

- k. The ARP may quote the voluntary premium of the designated ARC based on information provided by the Eligible Risk for the coverage desired. The ARP must inform the Eligible Risk that the final premium will be determined and billed by the ARC upon receipt of the new business application and any supplemental information necessary to calculate the voluntary premium for comparison to the MAIP premium;
 - l. The ARP must notify the Eligible Risk that he has the option of utilizing an installment payment plan;
 - m. The ARP must verify that the Eligible Risk has signed the new business application before it is submitted to the MAIP; and
 - n. 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 i) the certification number assigned to the application, ii) the ARC to which the policy is assigned and iii) the effective date of the coverage, the ARP is responsible for providing the ARC with the following items within two business days:
 - a. The original application form, any additional or supplemental information, and if applicable, a copy of the voluntary premium quote or voluntary premium quote identification number. The application must be signed by the Eligible Risk and the ARP; and
 - b. The required deposit premium pursuant to Rule 28.
 6. The new business application, any additional coverage, and/or modifications in coverage must be submitted to the ARC within two business days of the effective date of coverage.
 7. The ARP must remit forward premium payments to an ARC within two business days of receipt, ~~on a timely basis~~. However, an ARC 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 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 business days after binding coverage or certifying a registration.
11. The ARP must forward to the Eligible Risk within 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 Assigned Risk Producer Procedures Manual and the Assigned Risk Company Procedures Manual.
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 months of the initial implementation of the MAIP. For new ARPs, such training must be completed within six 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 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 in this Section.

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 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 ARP 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 of Section C.1. 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 information in Sections C.2.a. and C.2.b., 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 identified in C.1. and C.2. 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 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 pursuant to Rules 30 and 31. Any licensed property or casualty producer who, within the preceding 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 the ARP whose

certification has been revoked has a direct or indirect material and continuing proprietary or management interest.

An ARP 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 pursuant to Rule 40.

3. If an Exclusive Representative Producer's (ERP's) appointment has been terminated by ~~his~~ a Servicing Carrier for violations of any obligation(s) delineated in Rule 14, with the exception of Section D. Production Criteria, and having exhausted the appeal rights pursuant to Rules 14.H. and 20, ~~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 MAIP certification or continuation of an existing MAIP ~~its residual market~~ certification. The ERP shall be ineligible to reapply for certification as an ARP until such time as the producer is eligible to reapply for appointment as an ERP.

A. Requesting a Review

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 review and ruling by the Governing Committee on the alleged practice. The request for hearing review must be made within thirty (30) days after the date such person knew of the alleged practice. Any written material 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 review.

The hearing review shall be held within fifteen (15) business days after the receipt of the original request, unless such requirement is waived by the aggrieved party. Except as may be otherwise provided by the Governing Committee, the hearing review shall be held by a Governing Committee Review pPanel appointed by the Governing Committee, consisting of three (3) Governing Committee members entitled to vote. The decision of this pPanel 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 review. The ruling of the majority of the pPanel 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. Appealing a Ruling

Any formal Governing Committee ruling may be appealed to the Commissioner by filing a notice of appeal with the MAIP and the Commissioner within thirty (30) days after the date of the ruling's issuance. The ruling of the Governing Committee shall remain in full effect unless otherwise directed by the Commissioner. 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 review.