

## Appendix "B"

### Second Revised Rules

#### Rule 21 – General Provisions

##### **A. General Provisions**

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

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

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

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

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

3. All private passenger motor vehicle insurance business, including renewal business, with policy effective dates on or after April 1, 2008 that has 10 or more Safe Driving Insurance Points ("S.D.I.P."), must either be written voluntarily or declined and referred for placement in the MAIP. These risks can no longer be ceded to the CAR pool as of April 1, 2008.

All private passenger motor vehicle insurance business with policy effective dates on or after April 1, 2009, must either be written voluntarily or be declined and referred for placement in the MAIP. These risks can no longer be ceded to the CAR pool as of April 1, 2009.

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

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

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

1. The insured, at his own initiative, chooses not to renew his policy with such Member;
2. The producer terminates his relationship with a Member and the producer transfers his book of business, which includes such Clean-in-Three risk, from that Member to a new Member; or
3. The Member terminates his relationship with a producer and the producer transfers his book of business, which includes such Clean-in-Three risk, from that Member to a new Member.

**D. Responsibility of CAR During the Transition Period**

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

## Rule 22 – Definitions

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

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

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

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

**CAR** means Commonwealth Automobile Reinsurers.

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

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

- (1) has been licensed to operate an automobile in Massachusetts at least thirty-six (36) successive months prior to the effective date of the policy;
- (2) has been continuously insured for the past thirty-six (36) months prior to the effective date of the policy, with no more than one period of lapsed coverage and where such period was not in excess of sixty (60) days;
- (3) has not been found to be at fault for an accident that generated an insurance claim including a PIP claim, or a traffic violation as defined in the Safe Driver Insurance Plan (S.D.I.P.) in the thirty-six (36) months immediately prior to the effective date of the policy; and
- (4) In the previous sixty (60) successive months prior to the effective date of the policy has not had a DUI conviction or a conviction for a vehicular felony, as defined in the Safe Driver Insurance Plan.

**COMMISSIONER** means the Commissioner of Insurance of Massachusetts.

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

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

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

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

**LIMITED ASSIGNMENT DISTRIBUTION COMPANY (LADC)** means an insurer which is licensed to write motor vehicle insurance policies or bonds in Massachusetts that has been approved pursuant to the Rules of Operation to enter into an agreement with a Member that has been appointed as an ARC for the purpose of servicing that Member's quota share of MAIP business.

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

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

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

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

**NEW BUSINESS** for the private passenger motor vehicle insurance market means : 1 a newly licensed driver applying for his or her own policy; or 2) a risk applying to a

Member who has not been insured in the Commonwealth in the twelve (12) months preceding the application for coverage. This definition will expire upon the completion of the transition as contemplated in Rule 21 from CAR to the MAIP.

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

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

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

**QUOTA SHARE** means the volume of business to be assigned to a Member participating as an ARC in the MAIP.

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

## Rule 23 – Member Obligations

### A. Member Obligations

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

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

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

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

**B. Inactive Member Obligations**

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



## **Rule 24 – Governing Committee**

### **A. Responsibilities of the Governing Committee**

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

### **B. Members and Alternates**

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

### **C. Powers**

The Governing Committee shall have the following powers:

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

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

2. a. To appoint and remove the officers of the MAIP, subject to the approval of the Commissioner, and fix their salaries within the ranges established for the position. After an appointment has been approved, the Commissioner may instruct the Governing Committee to remove the officer for cause only. Salary ranges for officers shall be established by the Governing Committee, subject to the approval of the Commissioner, at a level that is consistent with the level of salaries in public sector organizations in Massachusetts;

- b. To appoint or employ others as is necessary to carry out the business of the MAIP;
3. To appoint, in consultation with the Commissioner, standing or temporary subcommittees for purposes of assuring that subcommittees fairly represent the Member Companies and producers, with due consideration given to the existence of expertise appropriate for the subcommittee in question. No individual may serve as Chairperson of more than two (2) standing subcommittees;
4. To prepare a Manual of Administrative Procedures which shall contain instructions for the statistical recording and reporting of MAIP business, auditing and claim review procedures, and other pertinent information;
5. To appoint or terminate ARCs and LADCs as necessary;
6. To certify or revoke the certification of ARPs as necessary;
7. To manage the process by which risks are assigned to ARCs and to establish a process for requests for reassignment by policyholders by reason of placement in the MAIP, as is provided for by Rule 26.B, and to report quarterly to the Division the circumstances and outcomes of such requests for review;
8. To ensure that CAR complies with its obligations to applicants and policyholders in the MAIP;
9. To levy assessments on the Members as necessary for the operating expenses of the MAIP;
10. To assess penalties as provided for in the Rules of Operation or Manual of Administrative Procedures and to report to the Commissioner on a quarterly basis all producer and Member infractions;
11. To authorize contracts as necessary to provide space, equipment and services for the MAIP;
12. To distribute an annual report and minutes of the Annual Meeting of the Governing Committee and all other Governing Committee, subcommittee and advisory committee meetings to the Commissioner, to Members and to producer representatives serving on any committee;
13. To file manuals of classifications, rules, rates, rating plans and policy forms with the Commissioner, as may be permitted or required by law;

14. To initiate or defend legal actions in the name of the MAIP on behalf of the Members; and
15. To take any other action it deems necessary or appropriate for efficient and effective operation of the MAIP consistent with the purpose and intent of the MAIP.

**D. Annual Meeting**

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

**E. Additional Meetings**

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

**F. Agendas for Meetings**

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

**G. Quorum**

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

**H. Procedures**

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

immediately. Any party aggrieved by the action may appeal to the Commissioner pursuant to Rule 40.B.

**I. Proxy Voting Not Allowed**

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

**J. Open Meetings**

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

### **Rule 25 – MAIP Officers**

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

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

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

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

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

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

## **Rule 26 – Policyholder Rights and Responsibilities**

### **A. Eligibility Requirements**

#### **1. Applicants Eligible for the MAIP**

- a. A completed, signed application for assignment submitted to the MAIP, shall constitute a certification by the applicant, or his duly authorized agent submitting the application on his behalf, to the effect that the applicant has attempted within 15 days prior to the date of application, to obtain motor vehicle insurance in the voluntary market and that he has been unable to obtain such insurance through a voluntary policy.
- b. An application shall be considered in good faith if the applicant reports all information of a material nature and does not make incorrect or misleading statements in the prescribed application form, or does not fall within any of the prohibitions or exclusions shown in section A.3 of this Rule.
- c. The MAIP shall be available to residents and non-residents of the state only with respect to motor vehicles that are registered or will be registered in the state within fifteen (15) days, except that nonresidents who are members of the United States military forces shall be eligible with respect to motor vehicles registered in other states provided such military nonresidents are stationed in this state at the time application is made and are otherwise eligible for insurance under the Plan.

#### **2. Motor Vehicles Eligible for Assignment**

The MAIP shall accept for assignment applications to insure all types of motor vehicles that may be insured under the standard private passenger Massachusetts Automobile Insurance Policy pursuant to the Private Passenger Automobile Insurance Manual published by the Automobile Insurers Bureau ("AIB").

#### **3. Applicants Not Eligible for the MAIP**

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

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

**B. Reassignment Rights**

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

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

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

### **C. Clean-in-Three Risks**

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

### **D. Re-Eligibility for the MAIP**

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

#### 1. New Application

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

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

#### 2. Renewal Application

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

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



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

### **E. Cancellations**

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

#### 1. Cancellation at the Request of the Policyholder

If for any reason the policyholder requests cancellation of his policy, the return premium to be refunded to him shall be calculated at 0.90 of the pro rata unearned premium for the period of coverage or the sum of \$25 per motor vehicle or policy, whichever is greater, except in any of the following cases when the return premium shall be computed pro rata:

- a. If the policyholder has disposed of the motor vehicle, provided the policyholder obtains a new policy with the same company on another motor vehicle to become effective within thirty (30) days of the date of cancellation;
- b. If the insured motor vehicle is repossessed under the terms of a financing agreement;
- c. If a motor vehicle is cancelled from a policy, the policy remaining in force on other motor vehicles; or if a concurrent motor vehicle policy, with the same company, but covering another vehicle, remains in force in the name of the policyholder or his spouse, if a resident of the same household;
- d. If the policyholder enters the armed forces of the United States of America;
- e. If the insured motor vehicle is stolen or destroyed (total or constructive total loss) and cancellation is requested by the insured within thirty (30) days following the date the motor vehicle is stolen or destroyed; or
- f. If the policyholder requests cancellation of a policy because coverage has been replaced in the voluntary market, and provides the assigned company written confirmation of the replacement coverage.

#### 2. Cancellation by the ARC or LADC

- a. An ARC or LADC that has issued a policy under the MAIP shall have the right to cancel the insurance for reasons permitted under Massachusetts law, and by giving notice as required in the policy.
- b. Each such cancellation shall be on a pro rata basis, subject to a minimum premium of \$25 per motor vehicle or policy whichever is greater, with the balance returned to the policyholder. A copy of each such cancellation notice shall be furnished to the producer of record. A statement of facts in support of each such cancellation, as is required for a statutory notice of cancellation, shall be furnished to the producer of record and to the policyholder twenty (20) days prior to the effective date of cancellation.

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

No coverage will be effective if the policyholder's premium remittance that accompanies the application is justifiably dishonored by the financial institution.

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

Nothing herein shall be deemed to affect the right of the ARC or LADC to rescind a policy for fraud, misrepresentation, or if the policyholder's premium remittance that accompanies the application is justifiably dishonored by the financial institution, or to invoke other remedies provided by law.

### 3. Minimum Refund

At the time of cancellation, the policyholder shall be notified that any unearned premium amounts under \$5 will be refunded only upon the policyholder's request.

**Rule 27 – Coverages**

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

1. Bodily Injury Liability: Total policy limits of \$500,000 each person, \$500,000 each accident;
2. Personal Injury Protection: \$8,000 per person, per accident;
3. Property Damage Liability: Total policy limits of \$250,000 each accident;
4. Medical Payments: \$25,000 each person;
5. Uninsured Motorists: \$500,000 each person, \$500,000 each accident for bodily injury;
6. Underinsured Motorists: \$500,000 each person, \$500,000 each accident for bodily injury;
7. Physical Damage Insurance, which shall mean: (a) collision coverage or limited collision coverage, (b) fire and theft coverage, or (c) comprehensive coverage, as those coverages are defined in the Massachusetts Motor Vehicle Insurance Policy. Assigned Risk Companies must charge the extra risk rate as promulgated by the Commissioner or, in the alternative, refuse to issue collision, fire, theft or comprehensive coverage under any of the following circumstances:
  - a. Comprehensive, fire and theft or collision coverage on a vehicle customarily operated by or owned by persons convicted within the most recent five (5) year period of any category of vehicular homicide, auto insurance related fraud or motor vehicle theft;
  - b. Comprehensive, fire and theft or collision coverage on a vehicle customarily driven by or owned by persons who have, within the most recent five (5) year period, made an intentional and material misrepresentation in making claim under such coverages;
  - c. Collision coverage on a motor vehicle customarily driven by or owned by persons who have been involved in four (4) or more accidents in which such person has been deemed to be at fault in excess of fifty percent (50%) within the three (3) years immediately preceding the effective date of the policy;

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

## **Rule 28 – Application Process**

### **A. Submitting an Application to the MAIP**

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

Assigned Risk Producers must assure that the application for insurance through the MAIP is submitted on the prescribed form and that each application is completed accurately and thoroughly. An incomplete or incorrect application will be returned to the producer for remedy. Once the application for coverage through the MAIP is received and all required information for issuance of the policy is provided, the MAIP will assign a certification number to the application.

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

An application with a certification number will be randomly assigned to an ARC based on quota share as specified in Rule 29 – Assignment Process. The MAIP will notify the ARC of the policy assignment. The MAIP will notify the ARP of the ARC to which the policy is assigned and the effective date of the coverage.

Once the policy has been assigned to an ARC, the ARP is responsible for providing the ARC with the following items within two (2) working days as specified in Rule 31.B.2:

1. The original application form, signed by the applicant and the ARP; and
2. The required deposit premium as specified below.

### **C. Premium Deposit and Payment Options**

#### **1. Amount of Deposit**

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

- a. For a new business policy, a deposit of thirty percent (30%) is required.
- b. For a renewal policy, a deposit of twenty percent (20%) is required.

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

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

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

## 2. Installment Plan

Each installment bill will consist of one-tenth of the remainder of the policy premium, subject to a minimum amount due of \$20 (to which any outstanding balance of less than \$20 is to be added), plus an installment charge of \$4 on each installment. If there has been a lapse in coverage of more than one day at any time during the past twelve (12) months, the installment charge may be equal to an Annual Percentage Rate (APR) of fifteen percent (15%). If the policyholder elects to pay the outstanding balance at any point during the installment billing period, the installment charge for the current bill would apply.

- a. 1<sup>st</sup> installment – 1 month after the effective date of the policy;
- b. 2<sup>nd</sup> installment – 2 months after the effective date of the policy;
- c. 3<sup>rd</sup> installment – 3 months after the effective date of the policy;
- d. 4<sup>th</sup> installment – 4 months after the effective date of the policy;
- e. 5<sup>th</sup> installment – 5 months after the effective date of the policy;
- f. 6<sup>th</sup> installment – 6 months after the effective date of the policy;
- g. 7<sup>th</sup> installment – 7 months after the effective date of the policy;
- h. 8<sup>th</sup> installment – 8 months after the effective date of the policy;
- i. 9<sup>th</sup> installment – 9 months after the effective date of the policy; and

- j. 10<sup>th</sup> installment – 10 months after the effective date of the policy.

The first installment bill shall reflect the current annual policy premium plus the total installment charge, minus the deposit. Each installment bill shall display the status of the account and is to be released to the insured.

Additional premium, less the deposit premium resulting from changes to the policy, shall be spread over the remaining installments, if any, or will be billed immediately as a separate transaction if there are no remaining installments.

Return premium resulting from changes to the policy may be used to reduce the outstanding balance, or if the outstanding balance is eliminated, any amount remaining will be returned immediately. If an outstanding balance remains, the number and amounts of the remaining installments will be adjusted accordingly.

The return premium check shall be sent to the insured. In instances where the premium is financed and a power of attorney is on file with the assigned company, the return premium check shall be sent to the premium finance company.

### 3. Insufficient Funds Charge

An applicant or policyholder that issues a check that is returned for insufficient funds will be charged a fee of \$25.

### 4. Late Fee or Cancellation Fee

A policyholder that fails to pay an installment premium by the applicable due date will be charged a late fee of \$15.

### 5. Reinstatement on Non-Payment Cancellations

No grace period shall be allowed for the reinstatement of a policy cancelled for non-payment.

### 6. Agency Acceptance of Payments

Acceptance of payment by the ARP shall be viewed as a payment to the ARC or LADC. To avoid policy cancellation, a payment must be received on or before the policy cancellation date.

### 7. Premium Financed Policies

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

## **Rule 29 – Assignment Process**

### **A. Limited Assignment Distribution Procedure**

A Member may delegate its ARC responsibilities if the Member executes an agreement with a Limited Assignment Distribution Company (LADC) to service its quota share and to receive additional assignments of the Member's assigned risk business. Nothing in these Rules shall be construed to relieve a Member of its responsibility of ensuring that any LADC with which it has a contract to service its private passenger motor vehicle insurance risks complies with all CAR Rules, state laws and regulations. If at any time a LADC fails to maintain these requirements, the Governing Committee or the Commissioner may move to terminate the LADC.

### **B. Calculation of Initial Quota Share**

For the purposes of calculating a Member's initial Quota Share, the Member's voluntary market share will be the ratio of each company's written exposures for the twelve month period ending June 30, 2007 with CAR ID codes 0 or 1 over the industry written exposures for the twelve month period ending June 30, 2007 with CAR ID 0 or 1.

### **C. Assignment of Applications**

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

1. For the purpose of such distribution as described above: (1) voluntary private passenger property damage liability direct written exposures; and (2) private passenger MAIP premiums shall be defined as below:
  - a. "Voluntary private passenger property damage liability direct written exposures" shall be the number of private passenger property damage liability car years written by the company for the most recent twelve (12) months, regardless of the type of motor vehicle insurance policy under which such property damage liability car years are written, excluding private passenger liability car years written through the MAIP.
  - b. "Private passenger motor vehicle MAIP premiums" shall mean the total of:  
20/40 bodily injury (including guest), \$100,000 property damage liability, and \$8,000 personal injury protection manual premiums (excluding the Commissioner's subsidies) adjusted for SDIP points for



private passenger motor vehicle MAIP insureds and any risk voluntarily insured that is eligible for premium credits allowed under this rule.

#### **D. Quota Share Adjustment**

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

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

#### **E. Assignment Period**

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

If an Eligible Risk is unable to obtain insurance in the voluntary market at the end of the consecutive three (3) year period, notwithstanding CAR's obligations under Rule 26A to notify all Members of the risk's information if requested to do so by such risk as provided for in Rule 26.A, or is unable to obtain an extension by the designated ARC or LADC, reapplication for coverage may be made to the MAIP. Such reapplication shall be considered a new application and the Eligible Risk shall be assigned to a different ARC or LADC than previously designated.

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

#### **F. Credit Programs**

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

##### **1. Voluntary Credit**

- a. Each Member shall receive a credit for each policy presently in the MAIP that it voluntarily writes at the policy's expiration date, through the producer of record or through the Member's own producer.
- b. Each Member shall receive a credit for each policy voluntarily insured in the territory and operator classes listed under section F.2 below.
- c. Credit shall be applied to the Member's quota share in Rule 29.D for the appropriate premiums as defined under section F.2 below.

## 2. Amount of Credits

The amount of credit for rate year 2008 will be as follows:

One-hundred percent (100%) of the annual private passenger MAIP premiums defined in C.1.b. that would have been charged if the risk had been written through the MAIP for any of the following risks. No more than one such credit can be issued.

- a. Inexperienced Operator: Designated inexperienced operator classes having a higher proportion of MAIP risks. The MAIP shall at least annually circulate to Members a list of the inexperienced operator classes for credit;
- b. Senior Citizen: Any operator of the auto aged sixty-five (65) or over residing in the household; or
- c. Territorial: Designated rating territories having a higher proportion of MAIP risks. The MAIP shall at least annually circulate to Members a list of the rating territories qualifying for territorial credit.

The initial listing of credit eligible operator classes and rating territories are indicated by an 'X' in the table below:

Territory	Operator Class							
	10	15	17	18	20	21	25	26
1					X		X	
2					X		X	
3					X		X	
4					X		X	
5					X		X	
6					X		X	
7					X		X	
8					X		X	
9					X		X	
10					X		X	
11					X		X	
12					X		X	
13					X		X	
14					X	X	X	X

15	X	X	X		X	X	X	X
16	X	X	X	X	X	X	X	X
17					X		X	
18	X	X			X		X	
19	X	X	X		X		X	
20	X	X	X		X		X	
21	X	X	X	X	X	X	X	X
22	X	X	X	X	X	X	X	X
23			X		X		X	
24					X		X	
25					X	X	X	X
26			X		X	X	X	X
27					X		X	

- d. To qualify for credit, all of the following requirements must be met:
- (1) The Member must provide proper notification prior to the expiration of the policy;
  - (2) The policy must be in effect for at least ninety (90) days;
  - (3) The kinds and amounts of coverage to be offered as a voluntary risk shall at least equal those in the policy being replaced, and the premium for such coverage shall not exceed the Commissioner's fix-and-establish premium for the equivalent coverages; and
  - (4) The Member shall be required to submit an approved reporting form to the MAIP monthly for all policies qualifying during the month and agrees to submit supporting data to the MAIP upon request.
- e. The Member shall, if requested by the MAIP, agree to a physical audit of its records to substantiate the credits and exposures stated in the monthly report. The executed request for credit form must be submitted to the MAIP by the last day of the fourth month following the effective date of the policy.

### **G. Distribution Restrictions**

Distribution shall be made on the basis that any applicant within the foregoing definitions eligible for assignment, shall be assigned or reassigned to any Member with a quota share, subject to the following restrictions:

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

## 2. Household Procedure

If voluntary motor vehicle insurance coverage is in force on a motor vehicle owned by a Household Member at the time of the application to the MAIP, the applicant shall be assigned to the company providing the voluntary insurance unless the applicant specifically requests an individual policy separate from the existing policy, provided that the following requirements are met:

- a. The applicant is eligible under the rules of the MAIP;
- b. A copy of the Declarations page for the policy providing motor vehicle insurance coverage for a vehicle owned by a Household Member is submitted with the application;
- c. The limits and coverages requested are available from the assigned household company; and
- d. An assignment to any company under the provisions of the household procedure will be factored into such company's quota share. . Any assignment to any company under the provisions of the household procedure that is contrary to the above provisions shall be returned to the MAIP promptly for reassignment.

## 3. Reassignment to Prior Member

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

## **H. Accruing, Buying, Selling or Transferring Credits**

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

**I. Credits Relating to Clean-in-Three Risks**

Not later than April 1, 2009, CAR shall develop a credit mechanism designed to encourage carriers to insure and retain on a voluntary basis those consumers who are Clean-in-Three Risks and who meet the following criteria:

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

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

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

**A. Appointments**

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

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

4. In order to assure the protection of the public interest, the Governing Committee, in considering the appointment of an insurer as an ARC or LADC, shall require that the insurer, pursuant to a written agreement reviewed and approved by the Governing Committee or its designee, has the ability to and will effectively meet the following requirements:
  - a. Provide policy issuance and premium collection services for all eligible classes of risks, except for those classes of risks specifically exempted by the Commissioner upon the request of the applicant;
  - b. Service insurance claims in every state, the District of Columbia and Canada;
  - c. Administer a Direct Bill Program;
  - d. Provide the Installment Payment Plan as described in Rule 28 – Application Process. An ARC or LADC shall cooperate with ARPs to assure that policyholders are made aware of their option to utilize an Installment Payment Plan;
  - e. Maintain a Special Investigative Unit to investigate suspicious or questionable motor vehicle insurance claims for the purpose of eliminating fraud;
  - f. Report all required information to the MAIP in an accurate and timely manner;
  - g. Adopt and maintain a plan approved by the Commissioner providing for direct payment by the insurer to the insured under collision, limited collision, comprehensive, and fire and theft coverages; and
  - h. The policy forms, endorsements, new business application and renewal questionnaire shall be those filed by the Automobile Insurers Bureau and approved for use by the Commissioner for private passenger motor vehicle insurance.

**B. Responsibilities**

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

1. ARCs and LADCs must provide quality service to policyholders assigned through the MAIP by maintaining the standards established as a condition of appointment under Section A.1 of this Rule. Policies and other forms mailed to policyholders shall be the same as those used for non-ARC or non-LADC motor vehicle business. ARCs and LADCs shall provide the same level and type of service to policies issued through the MAIP, as they provide to policies issued voluntarily.
2. No group or members of a group under the same management or ownership or both may 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 an ARC or LADC than is provided to policyholders insured by an ARC or LADC member of the group.
3. General Duties

ARCs and LADCs shall perform the following general duties:

- a. Confirm operator driving licenses and records in order to effectively administer the Safe Driver Insurance Plan;
- b. Verify eligibility criteria;
- c. Verify that representations contained in the application for insurance are accurate as to classification, garaging, discounts, credits, vehicle use and vehicle description;
- d. Assure that a policy has been issued for each RMV-1 and/or RMV-3 certificate and that the policy effective date and the certification date are the same;
- e. Implement procedures to assure collection of premiums billed;
- f. Comply with the terms and conditions of premium finance notes and/or agreements submitted to the ARC or LADC, on behalf of applicants for insurance, by the producer or by a premium finance



company licensed under the laws of the Commonwealth of Massachusetts;

- g. Ensure that there is communication among the ARC's or LADC's Underwriting, Claims, and SIU departments and that any discrepancies in information are shared promptly among the departments and documented;
- h. Maintain and forward to the MAIP a copy of all written complaints filed with the ARC or LADC on all ARPs; and
- i. Monitoring of Assigned Risk Producers

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

- (1) Failure to maintain a valid producer's license as issued by the Division of Insurance;
- (2) Willful misappropriation of premium due an ARC or LADC in accordance with the provisions of the MAIP Rules of Operation;
- (3) The entry of a finding, by a court of competent jurisdiction that the producer has engaged in fraudulent activity in connection with the business of motor vehicle insurance;
- (4) Failure to remit payments to an ARC or LADC on a timely basis in accordance with the MAIP Rules of Operation;
- (5) Failure to notify the ARC or LADC of any suspected fraud in the application for insurance or in the underwriting or rating process or in the payment of premium obligations or surrounding a loss;
- (6) Failure to assist the ARC or LADC during any audit or investigation;
- (7) Failure to report all coverages bound within two (2) working days of the effective date of coverage;
- (8) Failure to comply with reasonable procedures as required by the MAIP for processing claims, remitting premiums and requesting coverages;

- (9) Failure to adhere to a directive issued by the Commissioner relative to the charging of Service Fees;
- (10) Failure to provide a reasonable and good faith effort to verify the information provided by the applicant, including rating and licensing data;
- (11) Failure to comply with applicable agency requirements and procedures, as prescribed in the MAIP Rules of Operation; and
- (12) Failure to comply with all of the provisions of the Rules of Operation and Manual of Administrative Procedures.

4. Reporting Requirements

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

5. Continuation of Eligibility as an ARC

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

**C. Procedures for Voluntary Writing of Risks from the MAIP**

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

a. Eligibility

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

b. Offer to Write

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

c. Notification

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

the provisional premium quotation to be offered. The policyholder shall be mailed the offer for voluntary coverage forty-five (45) days prior to expiration with copy to the producer of record.

d. Member Obligations

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

Once the offer to write voluntary coverage is mailed, the Member shall have no further obligation to the producer of record if the policyholder accepts its offer and the producer of record is not licensed by that Member. However, the Member shall have the option of servicing the policy through the producer of record if permitted by the laws of the state.

If such replacement coverage is obtained by the producer of record within the period of his or her forty-five (45) day advance notice, the producer of record shall notify the assigned Member and it shall not make an offer to the policyholder.

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

a. Eligibility

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

b. Offer to Write

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

3. Right of Insured to Reapply to Plan

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

**D. Failure to Comply with the Provisions of this Section**

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

**E. Reporting Credits**

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

## **Rule 31 – Assigned Risk Producer Requirements**

### **A. Eligibility Requirements**

In accordance with G.L. c. 175, §113H(C), every ARP shall be assigned to each and every ARC for the sole purpose of placing assigned risk business.

As of April 1, 2008, any licensed property and casualty producer in good standing shall be determined to have met the producer certification requirements of the MAIP. Subject to the provisions of Rule 21.B, these producers shall be eligible to submit business to the MAIP as an ARP provided that the producer can satisfy the requirements for electronic access to the MAIP and the Registry of Motor Vehicles, holds a property and casualty producer's license and maintains production criteria set out in Section C of this Rule.

Beginning April 1, 2008, in order to be eligible to submit private passenger business to the MAIP for assignment to an ARC or a Limited Assignment Distribution Company, an ARP, as defined in Rule 22 – Definitions, must meet the producer certification requirements of the MAIP as follows:

1. has electronic access to the MAIP and the Registry of Motor Vehicles;
2. has within the preceding twelve (12) month period worked for a minimum of six (6) months with a producer licensed by the Division of Insurance, or with a Massachusetts motor vehicle insurer, during which time the applicant's efforts were primarily devoted to the Massachusetts motor vehicle insurance market; and
3. In satisfying the preceding criteria the applicant must conclusively show that he or she:
  - a. is applying in good faith;
  - b. will operate from an established location properly equipped to meet producer certification requirements;
  - c. will maintain regular business hours;
  - d. has not been convicted of a crime related to his occupation as an insurance producer;
  - e. has not had his or her license to engage as an insurance producer revoked/suspended;
  - f. has not been involved in a material and substantial breach of a contract between an ARC or LADC and a producer;

- g. is not in default in remittance of any motor vehicle premiums due a Member;
- h. agrees to comply with the provisions of the Plan of Operation, the Rules of Operation, the Manual of Administrative Procedures, the MAIP's certification requirements, the production requirements as outlined in Section C of this Rule and the applicable regulations of the Division of Insurance;
- i. agrees to notify the MAIP of an agreement to sell the agency fifteen (15) days in advance of the proposed closing of any such sale; and
- j. has not had an ARP certification revoked by the MAIP as provided in these Rules, including failure to meet minimum production criteria within the preceding twenty-four (24) months, the revocation not having been reversed by the Governing Committee, the Division of Insurance or a court of competent jurisdiction.

#### **B. Ongoing Assigned Risk Producer Requirements and Responsibilities**

It will be the ongoing responsibility of an ARP to fulfill the following requirements as well as the producer certification requirements in Section A of this Rule. Failure to do so will be grounds for revocation of certification:

1. The ARP must use the policy forms, endorsements, new business application and renewal questionnaire that are filed by the Automobile Insurers Bureau and approved for use by the Commissioner for private passenger motor vehicle insurance.
2. The ARP must require that all Eligible Risks applying for insurance coverage by the MAIP complete a new business insurance application in its entirety.
3. The ARP must ensure that the application for insurance through the MAIP is submitted on the prescribed forms and that each application is filled out accurately and in its entirety. An incomplete or incorrect application will be returned to the producer for remedy. Steps that the ARP must take in order to complete an application correctly include the following:
  - a. The ARP must list all licensed operators in the household, including those not used for classification purposes, on the application;
  - b. The ARP must include photocopies of the licenses of each listed operator with the new business application;

- c. The ARP must supply documentation supporting the deferral for rating purposes of any household member;
  - d. The ARP must confirm each licensed operator's driving record in order to comply with the Safe Driver Insurance Plan;
  - e. The ARP must verify that the Eligible Risk has not been and is not now in default in the payment of any motor vehicle insurance premiums in the past twenty-four (24) months;
  - f. The ARP must certify where so required by Rule 26.A.1.a, that the risk has made an attempt to obtain private passenger automobile insurance within fifteen (15) days of the application to the MAIP and has been turned down for such insurance;
  - g. The ARP must include the full and complete address of the Eligible Risk. A post office box will not be accepted for the determination of garaging town;
  - h. The ARP must verify eligibility for premium discounts through the Registry of Motor Vehicles or other appropriate sources;
  - i. The ARP must order only those coverages from the ARC or LADC requested by the Eligible Risk, for which he or she may be eligible;
  - j. The ARP must quote proper premiums based on information provided by the Eligible Risk for the coverage desired;
  - k. The ARP must notify the Eligible Risk that he or she has the option of utilizing an Installment Payment Plan;
  - l. The ARP must verify that the Eligible Risk has signed the new business application before it is submitted to the MAIP; and
  - m. The ARP must sign the new business application before it is submitted to the MAIP.
4. The ARP must submit an electronic application for private passenger motor vehicle insurance coverage to the MAIP to obtain MAIP coverage for an Eligible Risk.
  5. Once the MAIP has notified the ARP of the certification number assigned to the application, of the ARC or LADC to which the policy is assigned and of the effective date of the coverage, the ARP is responsible for providing the ARC or LADC with the following items within two (2) business days:

- a. The original application form, signed by the Eligible Risk and the ARP; and
  - b. The required deposit premium as specified in Rule 28.
6. The new business application, any additional coverage, and/or modifications in coverage must be submitted to the ARC or LADC within two (2) days of the effective date of coverage.
7. The ARP must remit payments on a timely basis. However, an ARC or LADC shall extend the payment period for an additional seven (7) days upon sufficient notice that all or part of a premium is being financed by a licensed premium finance company where the premium finance company has given its written assurance to pay the full premium financed to the ARC or LADC directly. This provision shall not obligate an ARC or LADC 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 or LADC 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 or LADC.
10. The ARP must report all coverages bound and all registrations/titles certified to the ARC or LADC within two (2) business days after binding coverage or certifying a registration.
11. The ARP must forward to the Eligible Risk within thirty (30) days of receipt from the ARC or LADC, all policies and endorsements if not mailed directly by the ARC or LADC to the Eligible Risk.
12. The ARP must properly order endorsements.
13. The ARP must retain the necessary documentation of ARC or LADC transactions in accordance with the Manual of Administrative Procedures.
14. The ARP and his or her employees will be required to receive training on claims reporting and fraud recognition. For current ARPs and employees, such training must be completed within six (6) months of the initial implementation of the MAIP. For new ARPs, such training must be completed within six (6) months of certification by the Governing Committee or its designee to immediately submit motor vehicle insurance policies for placement through the MAIP with an ARC or LADC. For new employees, such training must be completed within six (6) months of hire.



Any fraud training program that receives three (3) CEU credits from the Massachusetts Division of Insurance will be acceptable. For purposes of this requirement, any other required training that an ARC or LADC provides to its producers is not considered sufficient for meeting this requirement.

15. The ARP must notify the MAIP and the ARC or LADC of any suspected fraud surrounding a loss.
16. The ARP must cooperate with ARC or LADC and MAIP personnel during all audits and investigations.
17. The ARP and his or her employees are prohibited from accepting a fee or any other monetary or tangible property for referring the insured or parties to an accident to any glass, repair or rental facility, or to any legal or medical provider.
18. ARPs shall provide referral information to consumers consistent with company practices under regulations relating to motor vehicle repairs.
19. ARPs who meet the producer certification requirements specified in this Rule after April 1, 2008, shall develop and maintain a book of business as required in Section C of this Rule.

### **C. Production Criteria**

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

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

**D. Service Fees**

1. G.L. c.175, §182 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 producers from charging the insured a rate different from that fixed, established or approved by the Commissioner. See also G.L. c.176D. The following acts and practices are prohibited:

- a. Charging a fee in addition to the premium rate fixed, established or approved by the Commissioner for certifying a registration on behalf of an ARC or LADC;
- 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 applicant's motor vehicle insurance business with an ARC or LADC;
- c. Charging a fee in addition to the premium rate fixed, established or approved by the Commissioner for providing assistance to the insured in the completion of forms which are completed in order for the insured to procure or to continue motor vehicle insurance; and
- d. Charging a fee in addition to the premium rate fixed, established or approved by the Commissioner for the sale of a "service contract" which provides for service or advice relating to the issuance, continuance, or renewal of an insured's motor vehicle insurance policy.

2. Nothing set forth in the provisions above is intended to prohibit producers from charging courier fees and other non-insurance related fees if the following requirements are met:

- a. The producer provides to the applicant a complete description of the non-insurance related services for which the fee, in addition to the premium rate, is being charged;
- b. The producer advises the applicant that there is no obligation to purchase the non-insurance related service and that the insured may obtain motor vehicle insurance through the producer, notwithstanding the insured's decision not to purchase the non-insurance related services;
- c. The applicant, after having been apprised of the above information, agrees to pay the fee; and
- d. The fee for the services provided is reasonable.

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

#### **E. Certification Ineligibility**

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

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

#### **F. Voluntary Termination**

An ARP may choose to terminate its ability to submit business to the MAIP. In this case, the ARP shall be required to provide thirty (30) days advance written notice to the MAIP.

The ARP shall return all MAIP forms, manuals and certification stamp(s) as well as any materials supplied by an ARC or LADC.

### Rule 32 – Claim Practices

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

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

the term "complaint" shall mean any written communication initiated by the complainant primarily expressing a grievance;

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

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

B. In the handling of MAIP claims, ARCs and LADCs shall not:

1. Misrepresent pertinent facts or policy provisions relating to the coverage at issue;
2. Refuse to pay claims without having conducted a reasonable investigation based upon all available information; and
3. Fail to promptly settle claims, where liability is reasonably clear, under one portion of the policy coverage in order to influence settlements under other portions of the policy coverage.

C. Every ARC or LADC shall maintain a Special Investigative Unit to investigate suspicious claims for the express purpose of eliminating fraud and shall specifically report to the MAIP evidence of fraud pertaining to theft or misappropriation of a motor vehicle on policies issued through the MAIP as provided in the Manual of Administrative Procedures. Special Investigative Units so established shall be organized and operated to investigate claims on any policies that are issued through MAIP and on policies issued on a voluntary basis by Members. The SIU shall investigate suspicious circumstances surrounding underwriting, rating, and premium issues. A claim shall not be investigated by such a unit solely on the basis that such claim arises from a policy issued through the MAIP. The SIU shall also conduct an audit on a representative sample of policies to verify garaging and policy facts.

D. Compliance with Performance Standards. An error tolerance of ten percent (10%) for procedures and seven percent (7%) for claim resolution will be used to measure compliance with the Performance Standards. Failure to meet the standards or other requirements described in this Rule may result in penalties as directed by the Performance Standards or as may be otherwise imposed by the Governing Committee.

E. Dishonesty

Loss or expense resulting from the dishonesty of those employed to handle claims shall be the sole responsibility of the ARC or LADC.

F. Claim Contingency Procedures

1. Terminations

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

2. Other Terminations

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

Claims Advisory Committee for the further servicing of said ARC or LADC claims.

### **Rule 33 – Statistical Data**

Each Member shall furnish or cause to be furnished all statistical data in connection with policies of insurance which may be required by the 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 Safe Driver Insurance Plan. Each Member agrees to permit the Statistical Agent for the Massachusetts Division of Insurance to release statistics requested by the Governing Committee. Statistics shall be furnished at such times and in such form and detail as may be required by the Governing Committee.



### **Rule 34 – Audit Review**

Motor Vehicle insurance policies written by a Member directly or through a LADC subject to the Plan and Rules of the MAIP shall be subject to a review and audit in a manner and time determined by the Governing Committee. Each Member authorizes the MAIP to audit any portion of its motor vehicle insurance business that has a bearing on any credits, penalties, determination of quota share or any other issue relating to such business.

### **Rule 35 – Assessments**

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

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

**Rule 36 – (Reserved)**

### **Rule 37 - Commissions**

ARPs will be paid the same average commission for private passenger risks insured through the MAIP as are paid for voluntary retained risks in accordance with the rate approved by the Commissioner.

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

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

## Rule 38 – Terminations

### A. Assigned Risk Company and Limited Assignment Distribution Company Terminations

#### 1. Terminations by the MAIP

In the event that it becomes necessary for the Governing Committee to terminate a Member from the MAIP, notice shall be given in writing by the Chairman of the Governing Committee to the Chief Executive Officer of the Member. Such notice shall specify a period of time of no less than six (6) months or such earlier time as the parties may mutually agree, at which time the MAIP will no longer assign new business to the ARC. The notice to the terminating Member will further stipulate that the Member will be expected, in good faith, to the best of its ability, to 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.

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

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

#### 2. Approval by the Commissioner of Terminations by the MAIP

No termination of an ARC or LADC will become effective until approved by the Commissioner. In granting his approval, the Commissioner will consider the impact of such termination on policyholders, producers and brokers, and the market for motor vehicle insurance.

#### 3. Terminations by the Commissioner

The Commissioner may terminate any ARC or LADC which he/she determines to have violated the standards established for ARCs and LADCs in these Rules or the Plan or if he/she finds that the operation or financial stability of such ARC or LADC presents a danger to the interests of policyholders or the continued operation of the MAIP or will create substantial market disruption.

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

A Member electing to withdraw from the Massachusetts private passenger motor vehicle insurance market shall file a withdrawal plan for an orderly withdrawal that shall include full settlement of all financial obligations to the MAIP. Approval of the withdrawal plan for purposes of this section shall mean written approval by the Commissioner. Prior to approval, the Commissioner shall hold a public hearing if requested to do so by the Governing Committee of the MAIP, a Member of the MAIP, or any association of producers, to consider the effect of the withdrawal on the orderly and equitable conduct and operation of the Massachusetts motor vehicle insurance market. Any such party seeking a hearing must file a request with the Division of Insurance within ten (10) days of notice by the Division of Insurance to CAR of the opportunity for a hearing. Copies of the withdrawal plan shall be made public at the time of such notice.

**Rule 39 – Indemnification**

- A. Any person or Member made, or threatened to be made, a party to any action, suit or proceeding, because such person, or any officers, employee or representative of such Member, served on the Governing Committee or on any committee of the MAIP or was an officer or employee of the MAIP, shall be indemnified by the MAIP against all judgments, fines, amounts paid in settlement, reasonable costs and expenses including attorneys' fees, and any other liabilities that may be incurred as a result of such action, suit or proceeding, or threatened action, suit or proceeding, except in relation to matters as to which he or it shall be adjudged in such action, suit or proceeding to be liable by reason of breach of duty involving gross negligence, bad faith, dishonest, willful misfeasance or reckless disregard of the responsibilities in the performance of his or its duties or obligations to the MAIP and, with respect to any criminal actions or proceedings, except when such person or Member had reasonable cause to believe that his or its conduct was unlawful. Such indemnification shall be provided whether such person or Member is a Member or is holding office or is employed at the time of such action, suit or proceeding and whether any such liability is incurred prior to the adoption of this Rule. Such indemnification shall not be exclusive of other rights such person or Member may have and shall extend to the successors, heirs, executors or administrators of such person or Member. In the event of settlement or other termination of a matter before final adjudication, indemnification shall be provided only if the Governing Committee determines with the advice of independent counsel that the person or Member to be indemnified did not in counsel's opinion commit such a breach of duty.
- B. In each instance in which a question of indemnification arises, entitlement thereto, pursuant to the conditions set forth in the first paragraph of this Rule, shall be determined by the Governing Committee which shall also determine the time and manner of payment of such indemnification; provided, that a person or Member who or which has been wholly successful, on the merits or otherwise, in the defense of a civil or criminal action, suit or proceeding of this character described in the first paragraph on this Rule shall be entitled to indemnification as authorized in such paragraph. Nothing herein shall be deemed to bind a person or Member who or which the Governing Committee has determined not to be entitled to indemnification, or to preclude such person or Member from asserting the right to such indemnification by legal proceedings. Such indemnification as is herein provided shall be considered an operating expense apportioned among all Members, including any named in any such action, suit or proceeding, according to the Expense Ratio deemed by the Governing Committee to be most appropriate.

### **Rule 40 – Hearings, Review**

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

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

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