

**COMMONWEALTH AUTOMOBILE  
REINSURERS**

**RULES OF  
OPERATION**

**2020**

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**101 ARCH STREET, SUITE 400  
BOSTON, MA 02110**

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The Rules of Operation are adopted in accordance with CAR's Plan of Operation in order to carry out the provisions of the Plan.

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

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

When used in Rules 1 through 20, the following terms shall have the stated meanings:

**CAR** means Commonwealth Automobile Reinsurers.

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

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

**ELIGIBLE RISK** means any Person who qualifies for a Motor Vehicle Insurance policy pursuant to G.L. c. 175, § 113H and which has its Principal Place of Business within the Commonwealth of Massachusetts and which is required by a financial responsibility law as enacted by the legislature of any state or of the United States or by any valid regulation of the Interstate Commerce Commission, United States Department of Transportation, or the Massachusetts Department of Public Utilities to maintain Motor Vehicle Insurance with respect to vehicles owned or leased by it, and registered within or outside of the Commonwealth of Massachusetts provided that the applicant establishes that any person who usually drives the motor vehicle(s) holds or is eligible to obtain a valid operator's license. Ordinances or Bylaws, as enacted by any political subdivision of any state, shall not for the purposes of determining eligibility be considered as financial responsibility laws.

Pursuant to G.L. c. 175, § 113U, a Person seeking to insure Antique Vehicles does not qualify as an Eligible Risk.

**EXCLUSIVE REPRESENTATIVE PRODUCER (ERP)** means a Person licensed as a property and casualty insurance producer pursuant to G.L. c. 175, § 162H through § 162X inclusive, who (a) has a place of business (i) in Massachusetts or (ii) in any state contiguous to Massachusetts, and (b) has been appointed by the Governing Committee or its designee to a Servicing Carrier to immediately certify commercial Motor Vehicle Insurance policies.

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

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

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

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

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

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

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

**PRINCIPAL PLACE OF BUSINESS**, as it applies to the definition of an Eligible Risk, is defined as the chief or usual place of business. It is the corporation's nerve center, its center of direction, control, and coordination, the place where the principal officers generally transact business, and the place to which reports are made and from which orders emanate. It is the place where the majority of executive and administrative functions are performed.

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

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

**SERVICING CARRIER** means a Member which has been appointed by the Governing Committee, or its designee, as authorized in the Plan and Rules of Operation to issue Motor Vehicle Insurance policies at the request of an Exclusive Representative Producer.

**A. Member Obligations**

1. Every Member shall be bound by the Plan and Rules of Operation.
2. Financial Obligations
  - a. Each Member agrees to pay assessments levied against it for losses or expenses or any combination thereof incurred under policies issued through CAR by a Servicing Carrier; to pay assessments levied against it for the operating expenses of CAR; to pay penalties levied against it pursuant to the Rules adopted by the Governing Committee; and to accurately submit all statistics, records and accountings required by CAR in a timely manner.
  - b. Each Member, in recognition of the absolute necessity for timely payments of balances owed CAR , shall pay late payment fees at the prime rate as established by the Federal Reserve Bank of Boston compounded monthly for late payment of any assessment or late payment fees levied in accordance with the Plan or Rules of Operation. Each Member shall also compensate CAR for all damages and expenses incurred by CAR as a result of the failure of any Member to pay any balance owed CAR pursuant to Rule 3 or 11 that remains unpaid as of the 10<sup>th</sup> calendar day following the invoice due date, written notice of the default having been mailed by certified mail to the company by CAR on or after the first business day following the invoice due date. As used herein, “damages and expenses” shall include but not be limited to CAR's attorney's fees incurred directly or indirectly with the collection of the balance due, all costs of borrowing incurred as a result of the non-payment, the cost of all staff time spent in connection with efforts to collect the balance outstanding, all financial losses resulting from non-payment 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 CAR before such appeals will be considered. If the Governing Committee rules in favor of the Member, a proper adjustment, including interest at the prime rate and any damages and expenses assessed, will be made by CAR to the Member's account. Before exercising any other right of appeal provided

pursuant to G.L. c. 175, § 113H or the Plan or Rules of Operation, the Member shall pay all amounts owed to CAR.

- d. With respect to Members which have failed to pay assessments, late payment fees or compensatory damages or expenses within 45 calendar days of the postmark date of the overdue payment notice, a report will be submitted to the Division of Insurance setting forth the fact of such non-payment for its consideration and any action it deems appropriate.
3. When a Member is merged or consolidated into another insurer, or another insurer has reinsured a Member's entire Motor Vehicle Insurance business in Massachusetts, such Member and its successor in interest or such other insurer shall be liable for such Member's obligations.
4. A Member may terminate its membership in CAR upon the surrendering of its license to write Motor Vehicle Insurance policies or bonds in Massachusetts. Terminations of membership shall not discharge or otherwise affect liabilities of the Member incurred prior to the effective date of the termination of membership or in any way affect the Member's obligation to make payments pursuant to Rule 11.
5. If any Member is declared insolvent by a court of competent jurisdiction, its membership in CAR shall terminate as of the date it is declared insolvent, but it shall be liable to CAR for all obligations incurred under the Plan or the Rules prior to the date it is declared insolvent. CAR shall compute the amount of such obligations in accordance with the Rules and shall be entitled to offset any liabilities of the Member to CAR against any liabilities of CAR to the Member.

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

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



**B. Meetings**

1. There shall be an Annual Meeting of the Members of CAR, which shall be held within 75 days of the end of the fiscal year at such time and place as is determined by the Governing Committee and specified in the Notice of Meeting.
2. Special Meetings of the Members of CAR shall be called at any time by the Governing Committee upon the written request of eight members of the Governing Committee.
3. Written notice of any Annual or Special Meeting of the Members of CAR shall be mailed to each Member at least 10 days before the date fixed for such meeting stating the purpose of the meeting.
4. Minutes of all Annual and Special Meetings of the Members of CAR shall be sent to all Members, the Governing Committee, producer associations, and the Commissioner.

**C. Inactive Member Obligations**

Inactive Members must abide by the Plan and Rules of Operation. An Inactive Member shall receive those CAR distributions which are required by Article X of the Plan of Operation or which otherwise emanate from the Massachusetts Division of Insurance. Inactive Members will not be furnished with other CAR Bulletins and will not be assigned reporting numbers. 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.

**A. Responsibilities of the Governing Committee**

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

**B. Alternates**

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

**C. Powers**

The Governing Committee shall have the following powers:

1. To select at its Annual Meeting a Chairman and Vice-Chairman of the Committee in accordance with the following procedures:

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

2. a. To appoint and remove the officers of CAR, subject to the approval of the Commissioner, and fix their salaries within the ranges established for each position. After an appointment has been approved, the Commissioner may instruct the Governing Committee to remove the officer for cause only. Salary ranges for

officers shall be established by the Governing Committee, subject to the approval of the Commissioner, at a level which is consistent with the level of salaries in public sector organizations in Massachusetts.

- b. To appoint or employ others as is necessary to carry out the business of CAR;
3. To authorize contracts as necessary to provide space, equipment and services for CAR;
4. To appoint standing or temporary subcommittees in consultation with the Commissioner for purposes of assuring that subcommittees fairly represent the Members and producers, with due consideration given to the existence of expertise appropriate for the subcommittee in question. No individual may serve as Chairperson of more than two standing subcommittees.
5. To prepare a Manual of Administrative Procedures which shall contain instructions for the statistical recording and reporting of CAR business; auditing and claim review procedures; and other pertinent information;
6. To levy assessments on the Members as necessary for the operating expenses of CAR;
7. To assess penalties as provided for in the Plan or Rules of Operation or Manual of Administrative Procedures;
8. To appoint Servicing Carriers who meet the eligibility requirements within the Rules;
9. To apportion the underwriting results of CAR among the Members and to levy assessments or make such distributions as are appropriate for such apportionment in accordance with the Plan and the Rules of Operation;
10. To distribute an Annual Report and minutes of the Annual Meeting of the Governing Committee to the Commissioner, to Members and to producer representatives serving on any committee;
11. To file manuals of classifications, rules, rates, rating plans and policy forms with the Commissioner, as may be permitted or required by law;

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

**D. Annual Meeting**

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

**E. Additional Meetings**

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

**F. Agendas for Meetings**

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

**G. Quorum**

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

**H. Procedures**

Before the Governing Committee takes final action on a matter that has a direct impact on any Member's deficit participation, the final text of the motion to be considered will be provided to all members of the Governing Committee, at least 20 calendar days prior to the scheduled

Governing Committee action, unless 10 members of the Governing Committee vote to waive the 20 day requirement. The text of the motion, sent to Members, will be accompanied by an explanation. Any such action taken by the Governing Committee will not take effect for 20 calendar days, unless 10 members of the Governing Committee vote that the action will be effective immediately. Any party aggrieved by the action may appeal to the Commissioner of Insurance pursuant to Rule 20.B.

**I. Proxy Voting Not Allowed**

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

**J. Open Meetings**

All Governing Committee meetings shall be subject to the provisions of G.L. c. 30A, §18 through §25, inclusive. 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 § 21.

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

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

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

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

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

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

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

**A. Garage Insurance Coverage**

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

**B. Taxicab Coverage**

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

**C. All Other Commercial Motor Vehicle Insurance Coverage**

**1. Liability**

Coverage for policies written on the Business Auto Coverage Form is restricted to only those vehicles specifically described in the policy declarations, or as otherwise allowed in Section C.1.h.

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

**2. Physical Damage**

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

- a. Physical Damage Insurance shall mean: 1) collision coverage or limited collision coverage, 2) fire, theft and combined additional



coverage, or 3) comprehensive coverage, as defined in the Massachusetts Motor Vehicle Insurance policy. The Servicing Carrier may refuse to issue collision, fire, theft or comprehensive coverage under the following circumstances:

- (1) Comprehensive, fire and theft or collision coverage on a vehicle customarily driven by or owned by an individual convicted within the most recent five-year period of any category of vehicular homicide, auto insurance related fraud or motor vehicle theft;
- (2) Comprehensive, fire and theft or collision coverage on a vehicle customarily driven by or owned by an individual who has, within the most recent five-year period, made an intentional and material misrepresentation in making a claim under such coverages;
- (3) Collision coverage on a vehicle customarily driven by or owned by an individual who has been involved in four or more accidents in which such person has been deemed to be at fault in excess of 50% within the three years immediately preceding the effective date of the policy;
- (4) Comprehensive or fire and theft coverage on a vehicle customarily driven by or owned by an individual who has had two or more total theft or fire claims within the three years immediately preceding the effective date of the policy;
- (5) Comprehensive, fire and theft or collision coverage on a vehicle customarily driven, or owned by an individual convicted one time within the most recent three-year period of any category of driving while under the influence of alcohol or drugs;
- (6) Comprehensive, fire and theft or collision coverage on any motor vehicle for which a salvage title has been issued by the Registrar of Motor Vehicles unless a new certificate of title has been issued pursuant to G.L. c. 90D, § 20D;
- (7) Comprehensive, fire and theft or collision coverage on a high-theft vehicle which does not have at least a minimum anti-theft or auto recovery device as prescribed by the Commissioner of Insurance. The Commissioner may designate as a high-theft

vehicle any vehicle, classified according to make, model and year of manufacturer, which has both above-average incidence of theft and above-average original sales price, and may prescribe appropriate anti-theft or auto recovery devices for such vehicles;

- b. A Servicing Carrier may waive the deductible amount applicable to a payment under comprehensive coverage for glass damage and be reimbursed when the insured has elected to repair rather than replace damaged glass when permitted by law and where satisfactory proof of the repair has been presented to the Servicing Carrier;
- c. Towing and Labor: \$100.00 per disablement;
- d. Substitute Transportation: \$100.00 per day, 30-day maximum.
- e. Physical Damage coverage for damage to trailers under a trailer interchange contract may be written by a Servicing Carrier only when written in conjunction with motor vehicle liability coverage.
- f. Physical Damage coverage on repossessed motor vehicles shall not be written by a Servicing Carrier.

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

Experience rating must be applied to all qualified policies written by a Servicing Carrier in accordance with the eligibility rules contained in the Experience Rating Plan as filed by CAR for both liability and physical damage coverages. The experience rating modification factors shall be determined in accordance with the procedures described in the Experience Rating Plan.

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

Each Member shall furnish or cause to be furnished all statistical data in connection with commercial Motor Vehicle Insurance policies which may be required by the Commissioner's Statistical Plan, and which is not in conflict with Chapter 365 of the Acts of 1977. Each Member agrees to permit the Commissioner's statistical agent to release statistics to CAR's Governing Committee as are necessary to administer the operation of the ceded commercial market.

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

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

**A. Claim Practices**

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

1. Comply with the standards for prompt investigation of claims. Upon receipt of a new claim, investigate policy information for garaging, listed operator, prior accidents, or any other issues. Information developed may be used to affirm or deny claim payments. Discrepancies shall be communicated to the Servicing Carrier's underwriting department and the premium recalculated and billed if appropriate and in accordance with Division of Insurance requirements;
2. Affirm or deny coverage of claims within a reasonable period of time;
3. Effectuate prompt, fair and equitable settlements of claims in which liability is reasonably clear;
4. Maintain claim reserving procedures for all applicable claims;
5. Conduct internal claim quality audit of a reasonably representative number of claim files on residual market business, commensurate with their procedures for audit of claims on voluntary business, in order to verify compliance with the Performance Standards. With sufficient frequency to reflect reasonable continuity of their quality controls, Servicing Carriers shall prepare internal reports summarizing the efforts and conclusions of their claim department quality audit. Reports shall consolidate comments relative to both residual market and voluntary claim adjustment.

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

6. Establish complaint handling procedures, and maintain complete records of all complaints received on claims related to both residual market and voluntary business. Servicing Carriers shall maintain records reflecting the number of complaints received annually. For purposes of this Rule, the term “complaint” shall mean any written communication initiated by the complainant primarily expressing a grievance;
7. Acknowledge and act promptly upon communications regarding claims;
8. Promptly provide a reasonable explanation for denial of a claim or for the offer of a compromise settlement;
9. Resolve inter-company subrogation disputes involving Physical Damage and Personal Injury Protection claims through arbitration;
10. Have direct telephone reporting available for first and third-party claims; and

**B. Residual Market Claims**

Servicing Carriers shall not:

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

**C. Special Investigative Unit**

Every Servicing Carrier shall maintain a Special Investigative Unit (SIU) to investigate suspicious claims for the express purpose of eliminating fraud and shall specifically report to CAR evidence of fraud pertaining to theft or misappropriation of a commercial motor vehicle

on ceded policies as provided in the Manual of Administrative Procedures. Special Investigative Units so established shall be organized and operated to investigate claims on any ceded policies and on policies issued on a voluntary basis by Servicing Carriers.

The SIU shall:

1. Investigate suspicious circumstances surrounding underwriting, rating, and premium issues. A claim shall not be investigated by such a unit solely on the basis that such claim arises from a ceded policy; and
2. Conduct an audit on a representative sample of policies to verify garaging and policy facts.

**D. Compliance with Commercial Performance Standards**

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

**E. Special Reimbursements**

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

**1. Excess Judgments**

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

Within one year of the entry of judgment or the execution of settlement prior to any entry of judgment, the Servicing Carrier may apply to CAR



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

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

Approved reimbursements shall be submitted as separate loss records.

## 2. Penalties

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

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

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

Approved reimbursements shall be submitted as separate loss records.

3. Notice of Reimbursement

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

**F. Dishonesty**

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

**G. Claim Contingency Procedures**

1. Terminations

A Member whose designation as a Servicing Carrier is terminated pursuant to Rule 16 shall, subject to the provisions of Rule 10, service to a conclusion all claims against all policies issued by it in its capacity as a Servicing Carrier and in effect prior to the date of termination. "Service to a conclusion" shall mean until the claim is properly closed, or until an agreed date.

2. Other Terminations

Upon notice from the Governing Committee of the non-voluntary termination of a Member's designation as a Servicing Carrier, CAR shall examine a representative sample of open claim files to determine the amount of work completed, to estimate the future cost of servicing the claims to a conclusion, and to verify compliance with Rule 10. Findings from that examination shall be reviewed with the Compliance Audit Committee and its recommendations relative to the further servicing of said Servicing Carrier claims shall be presented to the Governing Committee for consideration.

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

**A. Participation – Expenses**

Expenses, including all costs of operating CAR and all costs, charges, expenses and liabilities and all income, property and other assets which the Governing Committee determine not to be properly chargeable to the profit or loss of risks ceded to CAR by Servicing Carriers, shall be shared by the Members. Sharing is based upon the proportion that each Member's Massachusetts direct written Motor Vehicle Insurance premiums, which are reported on its Annual Statement for the most recent calendar year, bear to the total of such premiums for all Members.

Commercial ceded written premium (CAR ID Codes 4 and 5) is excluded from this calculation. Additionally, all premium from classifications and/or coverages that are not statistically reportable to CAR (those classes or coverages not specified in the Massachusetts Statistical Plans) and all premium from Antique Motor Vehicles classification code 962000 is excluded from this calculation.

**B. Participation – Underwriting Results**

To establish a basis for allocating ceded commercial premiums, losses and expenses, each Member shall report statistical information required by the Rules of Operation to CAR or permit its statistical agencies, designated by the Member or appointed by the Commissioner, to report all required statistical information to CAR. If the Member does not exceed CAR's established statistical reporting thresholds and therefore is not required to report statistical data to CAR, CAR will utilize the Member's Massachusetts Annual Statement data as a basis for determining underwriting results.

Member participation shall be calculated on an annual basis in accordance with the following procedures:

A company's commercial participation ratios shall be determined as a function of the company's retained market share. Ceded business (CAR ID Codes 4 and 5) shall not be included in the commercial

participation formula. Additionally, all retained premium (CAR Identification Codes 0 and 1) for Antique Motor Vehicles (Classification Code 962000) shall be excluded from the calculation of commercial participation ratios.

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

1. Determine Premium to be Used in Participation Ratio Calculation

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

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

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

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

2. Determine Company's Final Participation Ratio

Determine each company's final participation ratio by dividing the company's retained premium pursuant to Section B.1.a. by the total industry retained premium pursuant to Section B.1.b.

**C. Settlement of Balances**

1. CAR will issue quarterly summaries to all Members reflecting their cumulative balances. However, CAR will settle the cumulative balances relating to the current policy year following the close of the third quarter of the calendar year, or at a later date if so determined by the Governing Committee.
2. The Governing Committee, subject to the approval of the Commissioner, may authorize reimbursement of a Servicing Carrier in whole or in part for a specific, necessary and extraordinary expense incurred in performing its obligations as a Servicing Carrier. The Servicing Carrier must petition the Governing Committee for such relief and the expense must be actually incurred before reimbursement. Such expense must be explained by the Servicing Carrier in such detail as required by the Governing Committee and must be shown to be a necessary expense that is significantly in excess of the normal additional expense expected to be incurred by a Servicing Carrier such that the expense could not have been reasonably contemplated by the Servicing Carrier in its acceptance of the terms of CAR's request for proposal for the current service period.
3. The Governing Committee, subject to the approval of the Commissioner, may authorize reimbursement of Servicing Carriers for normal insurance business losses incurred in connection with CAR business. Such normal business losses shall be defined and designated by the Governing Committee but shall not include any loss or expense incurred as a result of fraud or dishonesty on the part of a Servicing Carrier's claims personnel including, but not limited to, independent adjusters and agents, and each Servicing Carrier shall hold CAR harmless from and reimburse it for any such loss or expense charged. The Servicing Carrier must petition the Governing Committee for such relief.



**A. Appointments**

1. The Governing Committee shall appoint Members to serve as commercial Servicing Carriers, for a specified term, as authorized in the Plan and Rules of Operation, based on the responses to the Request for Proposal for Massachusetts Residual Market Commercial Automobile Business (RFP). The Governing Committee or its designee shall establish the RFP criteria.
  - a. A commercial Servicing Carrier may only enter into an agreement for the purpose of servicing its commercial ceded business, if the terms and conditions of that agreement have been fully disclosed in the response of that Member to the RFP.
  - b. A commercial Servicing Carrier, in addition to satisfying the requirements listed in Section A.3., shall be required to satisfy all criteria contained in the RFP, consistent with the Member's response to the RFP.
2. No domestic insurance company shall be denied participation in the RFP process to serve as a Servicing Carrier based solely upon its share of the Massachusetts Motor Vehicle Insurance market.
3. The Governing Committee in considering the appointment of a Member as a Servicing Carrier, shall require that the company has satisfied the Governing Committee that it, or another entity pursuant to its response to the RFP, has the ability to, and will effectively:
  - 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 an installment payment plan in accordance with the provisions of the Request for Proposal for Massachusetts Residual Market Commercial Automobile Business. A Servicing Carrier shall cooperate with its Exclusive Representative Producers

(ERPs) 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, and to assist in the verification of garaging and policy facts on a representative sample of policies.
- f. Report all required information to CAR 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.

#### **B. Servicing Carrier Responsibilities**

- 1. A Servicing Carrier that has contracted with a third party for performing any of its Servicing Carrier responsibilities guarantees the third party's performance.
- 2. A Servicing Carrier must provide quality service to CAR policyholders by maintaining the standards established as a condition of appointment under Section A.3.
- 3. A Servicing Carrier shall provide the same level of service to ceded policies as it provides to policies issued voluntarily.
- 4. Policies and other forms mailed to policyholders shall be those specifically referenced in CAR's Manual of Administrative Procedures.
- 5. General Duties

A Servicing Carrier shall perform the following general duties:

- a. Provide a contract signed by an authorized company representative with terms consistent with the Rules of Operation to a qualified newly appointed or reappointed ERP within 15 business days of the Servicing Carrier's receipt of the appointment by CAR. If the Servicing Carrier determines that the appointed or reappointed



ERP is not duly qualified, the Servicing Carrier will notify CAR within two business days of that determination.

- b. Verify that information contained in the application for insurance is accurate as to classification, garaging, discounts, credits, vehicle use, vehicle description and experience for those risks eligible to be experience rated.
- c. Assure that a policy has been issued for each Registration and Title Application (RTA) and that the policy effective date and the certification date are the same.
- d. Adopt procedures designed to assure that all assigned ERPs comply with all provisions of the contract between the Servicing Carrier and the producer.
- 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 Servicing Carrier, on behalf of applicants for insurance, by the producer or by a premium finance company licensed under the laws of the Commonwealth of Massachusetts.
- g. Maintain effective communication with ERPs by scheduling meetings when necessary and conducting educational or training sessions as may be necessary to assure that ERPs provide quality service to the motoring public.
- h. Verify, prior to contracting and on an ongoing basis, producer eligibility for appointment to a Servicing Carrier as required by G.L. c. 175, §113H.
- i. Provide ERPs with all information and procedures required for them to effectively service policies ceded to CAR.
- j. Comply with all of the provisions of the Plan and Rules of Operation and the Manual of Administrative Procedures.
- k. Maintain records of infractions of the Rules of Operation by ERPs and report such infractions as appropriate.

- l. Provide ERPs with necessary information from the policy declaration page, in a usable format and medium, to support the servicing of their insureds.
  - m. Provide producers with a list of approved inspection services for conducting pre-inspections.
  - n. Provide ERPs with premium, production, and experience data on their business, at least quarterly.
  - o. On an annual basis, provide CAR with information relative to each ERP's affiliation status for commercial Motor Vehicle Insurance. Identify any contractual relationship or membership in a producer cluster or network that the ERP may have or whether the ERP has a direct or indirect material and continuing proprietary or management interest in another agency or brokerage firm having an ERP appointment to another Servicing Carrier. Include any new agency affiliations or changes in affiliated agency relationships.
  - p. Offer training on claim reporting and fraud recognition to producers and their customer service representatives.
  - q. On an annual basis, evaluate an ERP's book of business to assure that minimum commercial Motor Vehicle Insurance written premium volume requirements are met pursuant to the provisions of Rule 14.C.1. Provide a copy of the evaluation to the ERP and to CAR within 15 days of the evaluation date.
  - r. Terminate an ERP's contract to bind coverage in accordance with Section B.6.
6. Termination of ERP Contracts
- a. A Servicing Carrier may terminate an ERP's contract and authority to bind coverage upon failure of the ERP to meet the eligibility requirements and/or definition of ERP as provided by the Rules of Operation or upon failure of the ERP to fulfill any of the requirements of Rule 14.B.1.
    - (1) A Servicing Carrier shall have cause to immediately terminate an ERP's contract and the authority to bind coverage pursuant to the provisions of Rule 14.B.2.a.

- (2) A Servicing Carrier shall have cause to terminate an ERP's contract and the authority to bind coverage with thirty days written notice of termination pursuant to the provisions of Rule 14.B.2.b.
- b. All ERP terminations issued by a Servicing Carrier, both immediate and 30 day terminations, shall:
  - (1) Be in writing.
  - (2) State the specific CAR Rule provision(s) that constitute the basis for the termination.
  - (3) Define changes in operational procedures, if any, that the Servicing Carrier intends to implement upon the ERP's receipt of the termination notice.
  - (4) Advise the ERP of the right to request that the termination be reviewed by CAR, pursuant to Rule 14.F. and include a copy of CAR's "Request for Review/Relief" form.
  - (5) Be hand delivered or mailed by a method that provides proof of mail to the ERP's principal place of business, with a copy of the termination notice sent concurrently to CAR and the Division of Insurance.
- c. A Servicing Carrier shall initiate procedures in a timely manner to administer a controlled run off of the business from an ERP whose contract has been terminated.
- d. When a termination notice is issued, the Servicing Carrier shall continue to service the ERP's in-force business until all of the policies have been legally cancelled or non-renewed. Such service includes additions, deletions and changes of vehicles and coverages on in-force policies.
- e. A Servicing Carrier may commence issuance of non-renewal notices following termination of an ERP appointment provided that the termination has not been stayed or overturned in accordance with the provisions of Rule 14.F. and Rule 20.

## 7. Reporting Requirements

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

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

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

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

particular ERP, all renewal business from the ERP will be ceded in accordance with Section B.7.b.

- d. A Servicing Carrier must report written premiums, paid and outstanding losses, allowable expenses and any other information which may be required by the Plan and Rules of Operation, the Manual of Administrative Procedures and the Massachusetts Commercial Automobile Statistical Plan.

**C. Exclusive Representative Producer Assignment Methodology**

1. Servicing Carriers shall receive appointments of newly applying producers on a rotational basis.
2. CAR will perform quarterly reviews of the distribution of ceded commercial written premium and, if necessary, may perform a redistribution of residual market books of business to maintain equity among Servicing Carriers. Any such redistribution shall occur no sooner than 60 calendar days from the date of review. If a redistribution is performed, any subsequent redistribution shall not occur for at least 12 reporting months after the effective date of the previous redistribution.

**A. Appointments**

**1. New Appointments**

A licensed producer who does not have a commercial Exclusive Representative Producer (ERP) appointment to one of the Member companies appointed as a Servicing Carrier, may apply for an appointment to represent a Servicing Carrier. The producer shall be subject to the eligibility criteria of Section A.4. If CAR determines the applicant has satisfied these criteria, the applicant will be appointed to a Servicing Carrier as an ERP. The Servicing Carrier shall provide service to such ERPs under substantially the same contractual terms and conditions governing its voluntary producer relationships.

An applicant applying as a consequence of a voluntary producer agreement being terminated because the applicant (1) intentionally withdraws from a voluntary agreement to write Motor Vehicle Insurance business on behalf of a Servicing Carrier, or (2) requests cancellation of a voluntary agreement for Motor Vehicle Insurance business, or (3) fails to fulfill any of the producer requirements specified in Section B.1. is ineligible for appointment to a Servicing Carrier as an ERP.

**2. Affiliated Producers**

- a. If a producer applying for appointment as an ERP is found to have a contractual relationship or membership in a so-called producer cluster or network, or a direct or indirect material and continuing proprietary or management interest in another agency or brokerage firm which also has an ERP appointment to a Servicing Carrier such producer is presumed to be an affiliate of the other agency or brokerage firm. A producer who applies for an ERP appointment and who is determined to have an affiliated relationship, will be appointed to the same Servicing Carrier as all members of the affiliated group. Existing ERPs identified as having an affiliated relationship will be appointed to the same Servicing Carrier as all members of the affiliated group.

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

- b. A producer applying for an ERP appointment must identify any affiliated relationships that relate to commercial Motor Vehicle

Insurance business at the point of application. An existing ERP must notify its Servicing Carrier and CAR of any new affiliated relationship, or change in affiliated status within 30 days of such change.

- c. Annually, upon request by a Servicing Carrier, an ERP must furnish updated information relative to its affiliated relationships or change in affiliated status for commercial Motor Vehicle Insurance business.
- d. The Servicing Carrier may terminate an ERP appointment for failure to provide the requested affiliated agency disclosure information. An ERP terminated under the provision of this section shall be provided 30 days written notice, and shall be ineligible for appointment to a Servicing Carrier for a period of two years commencing on the effective date of the termination. If the requested information is provided prior to the expiration of the 30 days, the ERP's appointment will be reinstated.
- e. An applicant or existing ERP aggrieved by CAR's determination of its affiliated status may appeal to the Governing Committee pursuant to Rule 20 and may present evidence to refute that determination. If successful, the applicant will be appointed to a Servicing Carrier pursuant to Rule 13.C.

### 3. Sale of Exclusive Representative Producer Business

If an ERP sells its stock or its book of business to a producer which does not have a Motor Vehicle Insurance relationship with a Servicing Carrier, such appointment will inure to the purchaser subject to the eligibility requirements in Section A.4. and production criteria in Section C. Any probationary status of the ERP appointment, resulting from failure of the ERP to maintain eligibility requirements or failure to develop and maintain the established minimum written premium volume requirement will carry over to the purchaser of the business.

If the sale does not result in the continuation of the appointment to the seller's Servicing Carrier, then that Servicing Carrier shall enter an agreement with the purchaser whereby all risks written by the Servicing Carrier on behalf of the seller, for policies with an effective date as of 90 days subsequent to the date of the sale for renewal business and as of the date of sale for new business, will

be fully serviced through the purchaser until the policy expiration date of each risk, as noted on the declaration page of each policy in force as of these respective dates. "Servicing" shall include, but not be limited to, changing existing vehicles, adding additional insureds, adding named operators onto the existing policy, endorsing coverage limits, providing all notices required by law, processing claims and collecting premium. All other obligations of both Servicing Carrier and producer as set forth pursuant to the Plan and Rules of Operation shall remain in force during the term of this agreement.

#### 4. Eligibility Requirements

Prior to any action being taken on an application for an ERP appointment, the producer must satisfy the following requirements:

- a. Complete a course of study, approved by the Commissioner of Insurance, which concentrates on the commercial Massachusetts Motor Vehicle Insurance system;
- b. Attain a passing grade on a written examination based on material covered in the approved course;
- c. Within the preceding 24 month period, work for a minimum of 12 months with a producer licensed by the Division of Insurance, or with a Member, during which time the applicant's efforts were primarily devoted to commercial automobile insurance in the Massachusetts Motor Vehicle Insurance market; and
- d. Meet the conditions for addressing a market need as determined by criteria established by CAR's Governing Committee; and
- e. Can provide documentation identifying commercial policies expected to be written as of the first year of appointment that would satisfy the production criteria pursuant to Section C.1. Continued eligibility is dependent upon compliance pursuant to the provisions of Section C.1.

Having satisfied the preceding criteria the applicant must conclusively show that such applicant:



- (1) is applying in good faith;
- (2) will operate from an established location in Massachusetts, except licensed nonresident producers in a state contiguous to Massachusetts if licensed pursuant to Massachusetts General Laws;
- (3) will maintain regular business hours;
- (4) has not been convicted of a crime related to his occupation as an insurance producer;
- (5) has not had his producer's license to engage as an insurance producer revoked or suspended;
- (6) has not materially or substantially breached a contract with a Member;
- (7) is not in default on the remittance of any Motor Vehicle Insurance premiums due a Member;
- (8) agrees to comply with the provisions of the Plan of Operation, the Rules of Operation, the Manual of Administrative Procedures, the contract between the ERP and the Servicing Carrier, and the applicable regulations of the Division of Insurance;
- (9) agrees to notify CAR and the appointed Servicing Carrier of an agreement to sell the agency 15 days in advance of the proposed closing of any such sale and further agrees to obtain a certification from the Servicing Carrier, which shall be provided to CAR, that the agency does not owe to the Servicing Carrier any past due premium based upon the latest available statement;
- (10) has not been declined an ERP appointment within the preceding 60 days, unless the declination was reversed by the Governing Committee, the Division of Insurance, or a court of competent jurisdiction;
- (11) has not had an ERP appointment terminated by a Servicing Carrier pursuant to Section E., within the preceding 24 months, unless the termination was reversed by the Governing Committee, the Division of Insurance or a court of competent jurisdiction.

**B. Ongoing Exclusive Representative Producer Requirements**

1. It will be the ongoing responsibility of an ERP to fulfill the following requirements and maintain eligibility pursuant to Section A.4.
  - a. Maintain a valid producer's license as issued by the Division of Insurance.
  - b. Collect, process and remit premium due a Servicing Carrier in accordance with the provisions of the Rules of Operation.
  - c. Refrain from engaging in fraudulent activity in connection with the business of Motor Vehicle Insurance.
  - d. Submit for all applicants a new business application for insurance with appropriate certification form(s), completed in their entirety, and a signed premium finance application/agreement, if applicable within two business days;
  - e. Provide a reasonable and good faith effort to verify the information provided by the applicant, including rating and licensing data;
  - f. Report all coverage bound and all registrations certified to the Servicing Carrier within two business days after binding coverage or certifying a registration;
  - g. Verify that the applicant has not been in default in the payment of any Motor Vehicle Insurance premiums in the past 24 months;
  - h. Comply with written procedures supplied by the Servicing Carrier for processing claims, remitting premiums and requesting coverage;
  - i. Forward to the insured within 30 days of receipt from the Servicing Carrier, all policies and endorsements if not mailed directly by the Servicing Carrier to the policyholder;
  - j. Forward all premium payments to a Servicing Carrier within two business days of receipt. However, a Servicing Carrier shall extend the payment period for an additional seven days upon sufficient notice that all or part of a premium is being financed by a licensed premium finance company where the premium finance company has given its written assurance to pay the full premium financed

directly to the Servicing Carrier. This provision shall not obligate a Servicing Carrier to provide such additional time if notwithstanding any written assurances the premium finance company has previously failed to perform its commitment;

- k. Notify the Servicing Carrier of any suspected fraud;
- l. Cooperate with the Servicing Carrier and CAR during all audits and investigations;
- m. Properly order endorsements;
- n. Order only those coverages from the Servicing Carrier that are requested by the insured and for which the insured is eligible;
- o. Quote proper premiums based on information provided by the applicants for the coverage desired;
- p. Conduct all monetary transactions with the insured and the Servicing Carrier as required by the Rules of Operation and the ERP contract;
- q. Notify the premium finance company and the insured that premium checks for all financed accounts are to be made payable to the Servicing Carrier;
- r. Retain the necessary documentation of Servicing Carrier transactions in accordance with the Manual of Administrative Procedures;
- s. Notify the applicant for insurance that he has the option of utilizing an Installment Payment Plan;
- t. Comply with appropriate notification procedures relative to the transfer of Motor Vehicle Insurance coverage to another Member;
- u. Develop and maintain a book of business pursuant to Section C.;
- v. Adhere to any directive issued by the Commissioner relative to the charging of service fees.
- w. Provide the Servicing Carrier and CAR with affiliated agency disclosure information pursuant to Sections A.2.b. and c.

- x. Comply with all of the conditions set forth in the contract between the ERP and the Servicing Carrier.
- y. Comply with all of the provisions of the Rules of Operation and the Manual of Administrative Procedures.

2. Grounds for Termination

a. Immediate Termination

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

- (1) Failure to maintain a valid producer's license as issued by the Division of Insurance.
- (2) Willful misappropriation of premium due a Servicing Carrier in accordance with the provisions of the Rules of Operation.
- (3) The entry of a finding, by a court of competent jurisdiction that the producer has engaged in fraudulent activity in connection with the business of Motor Vehicle Insurance.

b. Termination with a 30-Day Notice

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

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

**C. Production Criteria**

1. An ERP who fails to develop and maintain the following minimum commercial Motor Vehicle Insurance written premium volume requirements will be terminated. Total written premium includes all agency commercial Motor Vehicle Insurance written premium, voluntary and ceded combined.

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

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

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

2. An ERP terminated under the provisions of Section C. shall be ineligible for appointment to a Servicing Carrier for a period of two years commencing on the effective date of the termination.

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

#### **D. Service Fees**

1. G.L. c. 175, §182, in part, prohibits producers and others in connection with the placing or negotiation of insurance policies or the continuance or renewal thereof from selling or offering to sell anything of value whatsoever not specified in the policy of insurance. See also G.L. c. 176D, §3(8). The following acts and practices are prohibited:
  - a. Charging a fee in addition to the premium for certifying a registration on behalf of a Servicing Carrier;
  - b. Charging a fee in addition to the premium for acting as a producer and placing the applicant's Motor Vehicle Insurance business with a Servicing Carrier;

- c. Charging a fee in addition to the premium for providing assistance to the insured in the completion of forms which are completed in order for the insured to procure or to continue Motor Vehicle Insurance; and
  - d. Charging a fee in addition to the premium for the sale of a service contract which provides for service or advice relating to the issuance, continuance, or renewal of an insured's Motor Vehicle Insurance policy.
- 2. Nothing set forth in the provisions of Section D.1. is intended to prohibit producers from charging courier fees and other non-insurance related fees if the following requirements are met;
  - a. The producer provides to the applicant a complete description of the non-insurance related services for which the fee, in addition to the premium rate, is being charged;
  - b. The producer advises the applicant that there is no obligation to purchase the non-insurance related service and that the insured may obtain Motor Vehicle Insurance through the producer, notwithstanding the insured's decision not to purchase the non-insurance related services;
  - c. The applicant, after having been apprised of the information set forth in Sections D.2.a. and D.2.b., agrees to pay the fee; and
  - d. The fee for the services provided is reasonable.
- 3. The producer may enter into a contract with the applicant pursuant to which the producer provides non-insurance related services to the applicant if the producer complies with all of the requirements of Sections D.1. and D.2. In the event the producer and applicant execute such a service contract, the producer shall give the applicant an executed copy of the contract and shall retain an executed copy in his file which shall be made available to the Servicing Carrier, Division of Insurance and CAR upon request.

**E. Appointment Ineligibility**

1. An ERP that has had an appointment terminated by a Servicing Carrier for failing to satisfy any of the requirements specified in Section B.1. or for failing to maintain eligibility pursuant to Section A.4. shall be ineligible for reappointment for a period of two years commencing on the effective date of the termination.

A licensed property and casualty producer whose appointment has been terminated by a Member as a consequence of failing to satisfy any of the requirements of Section B.1. or failing to maintain eligibility pursuant to Section A.4. will be ineligible for appointment as an ERP for a period of two years commencing on the effective date of the termination.

2. If the certification of a MAIP Assigned Risk Producer has been revoked by CAR for violations of any obligation(s) delineated in Rule 31 and having exhausted the appeal rights pursuant to Rule 40, the producer is ineligible for the appointment or continuation of its ERP appointment. The producer shall be ineligible to reapply for appointment as an Exclusive Representative Producer until such time as the producer is eligible to reapply for certification as an Assigned Risk Producer.
3. An ERP terminated for failure to meet minimum production criteria pursuant to Section C. shall be ineligible for appointment to represent a Servicing Carrier as an ERP for a period of two years commencing on the effective date of the termination.
4. The term ERP, for purposes of Section E., includes any licensed producer and any other newly emerging producer with whom or which the terminated ERP has a direct or indirect material and continuing proprietary or management interest.

**F. Review/Relief of ERP Termination**

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

A completed "Request for Review/Relief" form must be received by CAR within 30 calendar days of the delivery of the termination notice. A review by CAR's Market Review Committee will be held within 15 business days of the date of CAR's receipt of the completed "Request for Review/Relief" form unless such requirement is waived by the

aggrieved ERP. The receipt by CAR of such form will stay the ERP's termination until the ERP has exhausted all appeal rights pursuant to Rule 20. However, any reviewing committee may lift the stay if such stay is not in the best interests of the motoring public.

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



**A. Premium and Fees**

1. An Exclusive Representative Producer (ERP) shall remit all collected premium payments to the Servicing Carrier within two business days of receipt. In no event shall the required premium deposit on new or renewal business be greater than 30% of the applicable annual premium for the coverages requested. However, an Eligible Risk whose Motor Vehicle Insurance policy has been cancelled for non-payment of insurance premiums during the preceding 24 months may be required to pay 100% of the policy premium before insurance is bound.
2. Acceptance of payment by an ERP shall be deemed payment to the Servicing Carrier.
3. The standards pertaining to premium financing for policies issued through CAR must be consistent with state laws and regulations.

**B. Defaulted Premium**

1. No Servicing Carrier shall be required to issue a Motor Vehicle Insurance policy if the applicant is in default of the payment to an insurance company of any Motor Vehicle Insurance premiums due or contracted during the preceding 12 months.
2. If the Servicing Carrier issues a cancellation notice for non-payment of premium to the policyholder and the policyholder's remittance received by the Servicing Carrier subsequent to the issuance of such cancellation notice is justifiably dishonored by the financial institution, the policy will terminate on the date and time shown on the cancellation notice issued for non-payment of premium.
3. In the event of a default resulting in a termination of an ERP, a Servicing Carrier may petition CAR for reimbursement on account of the default of that ERP. A determination on reimbursement to the Servicing Carrier will be made by the Governing Committee or its designee, in accordance with the criteria specified in the Manual of Administrative Procedures.

**A. Servicing Carrier Terminations**

**1. Voluntary Terminations**

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

The advance notice of termination shall specify a date, no sooner than 12 months from the date notice is received by CAR or such earlier time as the parties shall mutually agree, when the terminating Servicing Carrier will cease accepting new applications.

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

**2. Terminations by CAR**

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

In the event that it becomes necessary for the Governing Committee to terminate a Member as a Servicing Carrier, such notice shall be given in writing by the Chairman of the Governing Committee to the Chief Executive Officer of the Servicing Carrier. Such notice shall specify a date no sooner than 12 months from the date of the notice or such earlier time as the parties may mutually agree, at which time the Servicing Carrier will no longer be authorized to accept new business on behalf of CAR. The notice to the terminating Servicing Carrier will further state that the Servicing Carrier will be expected, in good faith, to the best of its ability to continue to provide service on existing

policies as required under the Plan and Rules of Operation and the Manual of Administrative Procedures until the expiration date following the effective date of the termination notice unless the parties shall have mutually agreed to other arrangements for the service of such policies.

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

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

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

### 3. Terminations by the Commissioner

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

### 4. Commissioner Approval of Servicing Carrier Terminations

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

**B. Producer Terminations**

1. Voluntary Terminations

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

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

2. Producer Terminations by a Servicing Carrier

Termination of an ERP shall be governed by Rules 13 and 14.

For ceded commercial business, Servicing Carriers shall receive a credit against their premium written account for the expenses noted in A. and B.

**A. Premium Tax and Commission**

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

**B. Other Expenses**

On both an interim and final basis, Servicing Carriers will be reimbursed for Other Expenses including, but not limited to, unallocated loss adjustment expenses and general company expenses according to the allowance as determined through the review and selection process associated with the Request for Proposal for Massachusetts Residual Market Commercial Automobile Business.

**C. Interim Ceding Expense Allowances**

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

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

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

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

- A. Any person or Member made or threatened to be made a party to any action, suit or proceeding, because such person or any officer, employee or representative of such Member served on the Governing Committee or on any committee of CAR or was an officer or employee of CAR, shall be indemnified by CAR against all judgments, fines, amounts paid in settlement, reasonable costs and expenses including attorneys' fees, and any other liabilities that may be incurred as a result of such action, suit or proceeding, or threatened action, suit or proceeding. However, if the person or Member is adjudged in such action, suit or proceeding to be liable by reason of breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance or reckless disregard of the responsibilities in the performance of his or its duties or obligations to CAR, such person or Member shall not be indemnified by CAR. With respect to any criminal actions or proceedings arising from service on the Governing Committee or on any committee of CAR or as an officer or employee of CAR, CAR shall not provide indemnification when such person or Member had reasonable cause to believe that his or its conduct was unlawful.

Indemnification under this Section shall be provided whether or not such person or Member is a Member or is holding office or is employed at the time of such action, suit or proceeding and whether or not any such liability is incurred prior to the adoption of this Rule. Such indemnification shall not be exclusive of other rights such person or Member may have and shall extend to the successors, heirs, executors or administrators of such person or Member. In the event of settlement or other termination of a matter before final adjudication, indemnification shall be provided only if the Governing Committee determines with the advice of independent counsel that the person or Member to be indemnified did not in counsel's opinion commit such a breach of duty.

- B. In each instance in which a question of indemnification arises, entitlement thereto, pursuant to the conditions set forth in Section A. of this Rule, shall be determined by the Governing Committee. The Governing Committee shall also determine the time and manner of payment of such indemnification; provided, that a person or Member who or which has been wholly successful, on the merits or otherwise, in the defense of a civil or criminal action, suit or proceeding of this character described in Section A. shall be entitled to indemnification as authorized in Section A. 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 each Member's participation ratio as determined in Rule 11.



**A. Requesting a Review**

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

The review shall be held within 15 business days after the receipt of the original request, unless such requirement is waived by the aggrieved party. Except as may be otherwise provided by the Governing Committee, the review shall be held by a Governing Committee Review Panel consisting of three 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 15 business days of the review. The ruling of the majority of the Panel shall be deemed to be the formal ruling of the Governing Committee.

**B. Appealing a Ruling**

Any formal Governing Committee ruling may be appealed to the Commissioner by filing a notice of appeal with CAR and the Commissioner within 30 days after the date of the ruling's issuance. The ruling of the Governing Committee shall remain in full effect unless otherwise directed by the Commissioner. The Commissioner may approve, modify, amend or disapprove the ruling or direct the Governing Committee to reconsider the ruling. In addition, the Commissioner may issue any other appropriate order, including granting the aggrieved party a new review.