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February 26, 2019

BULLETIN NO. 1072

PROPOSED CHANGES TO THE RULES OF OPERATION

At its meeting of February 13, 2019, the Governing Committee voted to amend the following Rule of Operation by deleting and adding the language as indicated on the attached copy. A copy of the Filing Letter, which contains an explanation of the Rule changes, is attached for your information. The impacted Rule is listed below.

Rule 2 – Definitions

This Bulletin, with a copy of the proposed changes to the Rule listed above, is being furnished to every Member Company, each association of insurance Producers, and the Public Protection Division of the Office of the Attorney General as required in Article X of the Plan of Operation. Any Member Company, association of insurance producers, or the Attorney General may request a public hearing within five days of receipt of this Bulletin and Filing Letter, as provided by Article X of the Plan of Operation.

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

NATALIE A. HUBLEY
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Attachment



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February 26, 2019

Honorable Gary D. Anderson
Commissioner of Insurance
Massachusetts Division of Insurance
1000 Washington Street, Suite 810
Boston, MA 02118

Proposed Changes to the Rules of Operation

Dear Commissioner Anderson:

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

Rule 2 – Definitions

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

Explanation:

As part of its continuing efforts to ensure consistent underwriting and policy issuance procedures among Servicing Carriers handling commercial residual market business, the CAR Governing Committee is proposing an amendment to Rule 2 – Definitions of CAR’s Rules of Operation. Rule 2 defines an “Eligible Risk,” in part, as “any Person who qualifies for a motor vehicle policy pursuant to G.L. c.175, §113H.” Further, the CAR enabling statute provides that no carrier “shall be required to issue such policy... [if] [a]ny person who usually drives the motor vehicle does not hold or is not eligible to obtain an operator’s license.” A lack of clear guidance defining an individual’s eligibility to obtain an operator’s license, however, has led to inconsistent interpretation by Servicing Carriers of a risk’s eligibility for placement in the commercial residual market.

In order to ensure the consistent treatment of all risks, the CAR Commercial Automobile Committee established certain standard underwriting procedures to be employed by all Servicing Carriers for the verification of applicant drivers’ licenses while in the process of evaluating a risk’s eligibility for placement in the commercial residual market. The Committee determined that proposed amendments to the Rule 2 definition of an “Eligible Risk” must provide clear direction and must not be inconsistent with CAR’s enabling statute. Further, the Committee agreed that the eligibility provisions must also be consistent with their equivalents in the private passenger residual market, and, finally, the validation procedures must be consistent with policies and procedures of the Registry of Motor Vehicles as the regulatory body with licensing oversight in the Commonwealth.

To advance those objectives, the Governing Committee unanimously voted at its February 13, 2019 meeting to approve a proposed amendment to Rule 2 – Definitions of CAR’s Rules of Operation to specify

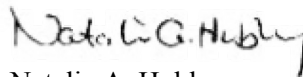
that, in order to qualify as an “Eligible Risk,” an applicant must establish “that any person who regularly drives the motor vehicle(s) holds a valid operator’s license.” The Governing Committee has concluded that the proposed amendment sets forth clarification of a Person who qualifies for a Motor Vehicle Insurance policy consistent with G.L. c.175, §113H. Further, the amendment ensures a definition of “Eligible Risk” consistent with MAIP Rule 26.A.3., which specifies that an applicant is not eligible for placement in MAIP if the applicant or 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.

To ensure access to insurance for otherwise qualified applicants who are unable to obtain coverage through the voluntary market, the Governing Committee is also recommending an amendment to Rule 31 – Operator Exclusion Form of the CAR Commercial Automobile Insurance Manual, which will be filed in accordance with 211 CMR 91.00 upon approval of the proposed amendment to the CAR Rules of Operation. The Manual will direct Servicing Carriers to employ the endorsement for any listed operator who does not hold a valid license, rather than reject the risk as ineligible for placement in CAR.

Finally, to ensure consistent risk evaluation procedures among Servicing Carriers, the Governing Committee has adopted Standards for Verification of Applicant Drivers’ Licenses to be implemented upon approval of the proposed Rule amendment. The Standards require that Servicing Carriers and Exclusive Representative Producers verify that the applicant establishes that any person who regularly drives the motor vehicle(s) holds a valid operator’s license, and define license eligibility pursuant to the requirements of the Massachusetts Registry of Motor Vehicles. Further, the Standards identify required documentation to validate licensing pursuant to Registry policies and procedures, and set forth minimum standards for which Servicing Carriers must review licensing for new and renewal business. A copy of the Standards, as adopted by the Governing Committee, is attached for your reference.

A copy of the proposed amendment to Rule 2 is attached hereto, and is being furnished to every Member Company, the two associations of insurance producers, and the Public Protection Division of the Office of the Attorney General, as required by Article X of the Plan of Operation.

Respectfully,



Natalie A. Hubley
President

Attachments: Rule 2 – Definitions
Standards for Verification of Applicant Drivers’ Licenses

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

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 regularly drives the motor vehicle(s) holds 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.

**Servicing Carrier and Exclusive Representative Producer
Standards for Verification of Applicant Drivers' Licenses**

Standards for the Verification of Applicant Drivers' Licenses: In determining whether an applicant is eligible for placement in the commercial automobile residual market, Servicing Carriers and Exclusive Representative Producers are required to verify for all new business, that the applicant establishes that any person who regularly drives the motor vehicle(s) holds a valid operator's license. In addition, with respect to all non-fleet private passenger type business, Servicing Carriers and Exclusive Representative Producers are required to verify for all new and renewal business, that the applicant establishes that any person who regularly drives the motor vehicles holds a valid operator's license.

Foreign Licensed Drivers: Foreign drivers may be eligible for placement for one year in the commercial automobile residual market with a valid foreign driver's license and, if their foreign driver's license is not in English, either a valid International Driving Permit or a completed Registry of Motor Vehicles Translation into English of a Foreign Driver License form before obtaining a Massachusetts driver's license. The year begins on the driver's most recent date of arrival in the United States. Note: An International Driver's License is not considered a valid driver's license and will not be accepted as a valid form of license.

Domestic Licensed Drivers: Any person who holds a valid operator's license from a state other than Massachusetts, must obtain a Massachusetts license in accordance with the standards of the Massachusetts Registry of Motor Vehicles. This requirement does not apply to anyone who regularly drives a motor vehicle owned by a named insured if the applicant can establish that said person is employed by a named insured whose Principal Place of Business is located in Massachusetts but resides in another state which has issued him or her a valid license.

Required Documentation: Servicing Carriers will require on the application the license number and state of any licensed member of the named insured's household and/or any other licensed individuals who regularly drive the insured vehicle(s) who hold a valid domestic license. In addition, Servicing Carriers shall require the following documentation with the application for any licensed member of the named insured's household and/or any other licensed individuals who regularly drives the insured vehicle(s), who lack a valid domestic license:

1. A copy of a valid foreign driver's license,
2. If that foreign driver's license is not in English, either a corresponding International Driving Permit or a completed Registry of Motor Vehicles Translation into English of a Foreign Driver License form, and
3. A copy of one of the following documents:
 - A valid passport from the country of origin
 - A valid alien registration receipt card (green card)
 - A valid employment authorization card issued by the United States Department of Homeland Security
 - Valid proof of nonimmigrant classification provided by the United States Department of Homeland Security

Documentation providing proof of the arrival date in the United States is required to validate eligibility for new and renewal business (i.e. passport entry date, dated airline ticket, etc.).

An application submitted without the above information and documents shall be considered incomplete and will result in cancellation or nonrenewal based on the procedures set forth in Rule 4 – Standard Procedures of CAR's Commercial Automobile Insurance Manual. The cancellation/nonrenewal notice must contain the following statement: "If the insured furnishes the necessary item(s) prior to the effective date of the cancellation, the cancellation shall be rescinded."

Exclusion of Listed Operators Not Holding a Valid License: Pursuant to Rule 31 – Operator Exclusion Form of CAR's Commercial Automobile Insurance Manual, Servicing Carriers will attach the Operator Exclusion Form, CR 99 01 08 18, to the policy for each operator listed on the application who does not hold a valid license.

Servicing Carrier/Exclusive Representative Producer Validation Tools:

For renewal business, the Servicing Carrier will rely on the information provided on the insured's new business application unless the insured or the Exclusive Representative Producer provides documentation updating the licensing or most recent date of arrival in the United States for operators with foreign licenses.

Servicing Carriers and Exclusive Representative Producers will utilize the appropriate resources (i.e. Massachusetts Registry of Motor Vehicles system, Non-Massachusetts driver's license reporting systems, etc.) to verify information regarding registration and/or insured/driver information to ascertain a presence in Massachusetts as it may pertain to the operation of a motor vehicle with a foreign or out of state license.

Servicing Carriers should utilize the CAR Ineligible Risk Database for review of previous actions taken pursuant to insured and/or operator driver's licensing cancellation and/or non-renewal actions by other Servicing Carriers

Definition of Terms: For purposes of this standard, the following definitions shall apply:

"Foreign driver's license" is a valid driver's license obtained in a foreign country. A valid foreign driver's license may be used for up to one year after entry to the United States if the country of issuance is a party to either the 1949 Convention on Road Traffic (T.I.A.S. No. 2487) or the 1943 Convention on the Regulation of Inter-American Automotive Traffic (T.I.A.S. No. 1567). Validity of a foreign driver's license is to be determined according to Appendix A of the Massachusetts Driver's Manual published by the Registry of Motor Vehicles.

"Domestic driver's license" is a driver's license issued by any state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Mariana Islands or any other territory or possession of the United States.

"Foreign driver" is an individual who holds a foreign driver's license but does not hold a valid domestic driver's license.

"International Driving Permit" is a document to be used in conjunction with a valid foreign driver's license obtained in the driver's home country, as authorized by the 1949 Convention on Road Traffic or the 1943 Convention on the Regulation of Inter-American Automotive Traffic. It is a translation of the foreign driver's license into various languages, including English.

"International Driver's License" is an unofficial document purporting to be a valid driver's license. It is usually sold on the internet or through storefronts with claims that it: 1) authorizes consumers to drive legally in the United states, even if they don't have state-issued licenses or if their state-issued licenses have been suspended or revoked; 2) can be used to avoid points or fines affecting state-issued driver's licenses; and 3) can be used as a photo identification in the United States.