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PRESIDENT

COMMONWEALTH AUTOMOBILE REINSURERS

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June 17, 2020

**BULLETIN NO. 1099**

**PROPOSED CHANGES TO THE RULES OF OPERATION**

At its meeting of June 17, 2020, the Governing Committee voted to amend the following Rules of Operation by deleting and adding the language as indicated on the attached copy. A copy of the Filing Letter, which contains an explanation of the Rule changes, is attached for your information. The impacted Rules are listed below.

Rule 13 – Servicing Carrier Requirements  
Rule 30 – Assigned Risk Company Requirements

This Bulletin, with a copy of the proposed changes to the Rules 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.

MARIAN ADGATE  
Corporate Documentation Specialist

Attachment



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## COMMONWEALTH AUTOMOBILE REINSURERS

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June 17, 2020

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 Rules of Operation:

Rule 13 – Servicing Carrier Requirements  
Rule 30 – Assigned Risk Company Requirements

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

Explanation:

In conjunction with the Registry of Motor Vehicle's replacement of the RMV-1 and RMV-3 forms with the Registration and Title Application (RTA) in late 2019, CAR's Governing Committee, at its meeting of June 17, 2020, approved modifications to Rules 13 and 30 of CAR's Rules of Operation to add reference to the new form and eliminate references to the obsolete forms.

A copy of the proposed amendments to Rules 13 and 30 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 13 – Servicing Carrier Requirements  
Rule 30 – Assigned Risk Company Requirements

cc: Mary Ellen Thompson - Counsel to the Commissioner  
Massachusetts Urban Agents Association, Inc.  
Massachusetts Association of Insurance Agents  
Public Protection Division – Office of the Attorney General

**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 ~~RMV-1 and/or RMV-3 certificate~~ 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**

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

1. A Newly Writing Company shall be eligible for appointment as an ARC as of the effective date of its initial rates and rate manual. The ARC shall be required to accept assignments through the MAIP on the date that MAIP processes the ARC's initial summary data submission pursuant to Rule 29.B.
2. A Member may be excused from its private passenger motor vehicle Servicing Carrier responsibilities for the business assigned to it through the MAIP if the Member executes a Limited Assignment Distribution Agreement (LADA). Rule 36 details the eligibility requirements and procedures applicable to LADAs.
3. In order to assure the protection of the public interest, the Governing Committee, in considering the appointment of an ARC, shall require that the Member has the ability to and will effectively meet the following requirements:
  - a. Provide policy issuance and premium collection services for all eligible classes of risks, except for those classes of risks specifically exempted by the Commissioner;
  - b. Service insurance claims in every state, the District of Columbia and Canada;
  - c. Administer a direct bill program;
  - d. Provide an installment payment plan as described in Rule 28 – Application Process. An ARC shall cooperate with ARPs to assure that policyholders are made aware of their option to utilize an installment payment plan;
  - e. Maintain a special investigative unit to investigate suspicious or questionable motor vehicle insurance claims for the purpose of eliminating fraud;

- f. Report all required information to the MAIP in an accurate and timely manner;
- g. Adopt and maintain a plan approved by the Commissioner providing for direct payment by the insurer to the insured under collision, limited collision, comprehensive, and fire and theft coverages; and
- h. Use the policy forms, endorsements, new business application and renewal questionnaire filed by the MAIP with and approved by the Commissioner for use in private passenger motor vehicle insurance.

**B. Responsibilities**

Nothing in this Rule shall be construed to affect the rights of any Member to enter into any third party contractual agreement for the purpose of servicing its voluntary business. Nothing in this Rule shall be construed so as to relieve any Member of its Quota Share or its share of the administrative expenses of the MAIP, as required by G.L. c. 175, § 113H. A Member appointed as an ARC is required to perform the following responsibilities in its capacity as an ARC:

1. An ARC must provide quality service to policyholders assigned through the MAIP by maintaining the standards established as a condition of appointment under Section A. Policies and other forms mailed to policyholders shall be the same as those filed by the MAIP and approved by the Commissioner for private passenger motor vehicle business. An ARC shall provide the same level of service to policies assigned to it through the MAIP as it provides to policies it issues voluntarily. At a minimum the ARC shall provide timely access to billing and claim information which will reflect current premium due, payments made, and if applicable, cancellation status and effective date, claim status and claim payments made.
2. An ARC shall, for purposes of quoting an assigned Eligible Risk, provide access to its voluntary rates to ARPs by providing either web-based rating capability directly or through a third party comparative rating vendor, or by providing a dedicated toll-free telephone service for quoting purposes.

If an ARC provides access through a third party comparative rating vendor and an ARP wishes to access an ARC's voluntary rates using a

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

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

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

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

The calculation of the premium assigned through the MAIP shall be based on information contained in the application. At the time the assignment is made, the ARC shall provide a form to the Eligible Risk requesting any additional or supplemental information necessary to accurately calculate the premium. The completed form shall be submitted by the ARP to the ARC with the application within two business days. If during the underwriting process an ARC discovers

third-party information that appears inconsistent with the information provided on the application for insurance or is inconsistent with any supplemental information, the ARC shall: 1) initiate an inquiry either directly with the insured or through the producer of record to resolve any factual errors; and 2) obtain the insured's consent before issuing a notice of adjustment to the down payment and/or total premium. If the inquiry is made directly to the applicant, the producer of record shall be furnished a copy.

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

4. No companies within an insurer group under the same management or ownership or both may provide a different level of service through a company within the group that is not an ARC than is provided to policyholders insured by a company with the group that is an ARC.
5. General Duties

ARCs shall perform the following general duties.

- a. Confirm operator driving licenses and records in order to administer the MAIP merit rating plan and its own merit rating plan accurately;
- b. Verify eligibility criteria;
- c. Verify that information contained in the application for insurance and any supplemental information is accurate as to classification, garaging, discounts, credits, vehicle use, vehicle description, and, to the extent verifiable, other rating factors;
- d. Assure that a policy has been issued for each ~~RMV-1 and/or RMV-3 certificate~~ Registration and Title Application (RTA) and that the policy effective date and the certification date are the same;

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

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

- (1) Failure to maintain a valid producer's license as issued by the Division of Insurance;
- (2) Willful misappropriation of premium due an ARC in accordance with the provisions of the MAIP Rules of Operation;
- (3) The entry of a finding, by a court of competent jurisdiction that the producer has engaged in fraudulent activity in connection with the business of motor vehicle insurance;
- (4) Failure to forward premium payments to an ARC within two business days in accordance with the MAIP Rules of Operation;
- (5) Failure to notify the ARC of any suspected fraud in the application for insurance or in the underwriting or rating process or in the payment of premium obligations or surrounding a loss;
- (6) Failure to assist the ARC during any audit or investigation;

- (7) Failure to report all coverages bound within two business days of the effective date of coverage;
- (8) Failure to comply with reasonable procedures as required by the MAIP for processing claims, remitting premiums and requesting coverages;
- (9) Failure to adhere to a directive issued by the Commissioner relative to the charging of service fees;
- (10) Failure to provide a reasonable and good faith effort to verify the information provided by the applicant, including rating and licensing data;
- (11) Failure to comply with applicable agency requirements and procedures, as prescribed in the MAIP Rules of Operation; and
- (12) Failure to comply with all of the provisions of the Rules of Operation and Assigned Risk Producer Procedures Manual and the Assigned Risk Company Procedures Manual.

#### 6. Reporting Requirements

On a monthly basis, ARCs must report all premiums written, and any other information that may be required by the Plan, Rules or Assigned Risk Company Procedures Manual.

#### 7. Continuation of Eligibility as an ARC

An ARC must maintain a viable book of voluntarily written private passenger motor vehicle insurance policies. The Commissioner may terminate any ARC if disruptive reductions in voluntarily issued motor vehicle policies are found to be in violation of this Section.

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

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

##### a. Eligibility

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

b. Offer to Write

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

c. Notification to the Producer of Record

The producer of record must be mailed notification of such offer ninety days prior to policy expiration, which shall contain the premium quotation to be offered. The policyholder shall be mailed the offer for voluntary coverage forty-five days prior to policy expiration with copy to the producer of record.

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

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

d. ARC Obligations to the Producer of Record

A duly licensed insurance producer, certified to place business through the MAIP, shall own and have an exclusive right, as the insured's producer of record, to use certain insurance information of the insured embodying the records of the insurance agency which shall include but not be limited to, the name of the insured, the policy inception date, the amount of insurance coverage, the policy number and the terms of insurance. An ARC may choose to offer voluntary coverage to a policyholder it has insured through the MAIP. Once the ARC mails the offer to write voluntary coverage and the policyholder accepts the offer, the policyholder's producer of record shall continue to represent the policyholder who has been written or renewed in the voluntary market and to service the policy unless: 1) the producer is decertified or suspended by the MAIP or the Commissioner of Insurance pursuant to Rule 31.B.; 2) the insured chooses to terminate such producer as its producer of record; or 3) the producer of record is precluded from dealing with other companies by contract. An ARC who



subsequently writes a policy on a voluntary basis that it previously insured through the MAIP shall pay a commission in accordance with its commission structure for business written in the voluntary market at voluntary rates, regardless of whether there is a contract between the ARC and the producer of record. No commission payments shall be made to the producer of record if that producer is decertified or suspended under Rule 31.B., is terminated by the policyholder as its producer of record, or is precluded from dealing with other companies by contract.

2. Voluntary Writing of Present MAIP Insured by Member Other than the ARC

a. Eligibility

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

b. Offer to Write

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

3. Right of Insured to Reapply to the MAIP

Nothing in the provisions of this Section shall render the policyholder ineligible for coverage in the MAIP for the full term of the three year assignment period. Subject to the right to reassignment pursuant to Rule 26.B.1., the policyholder may, at his or her option, continue the policy with the ARC as a MAIP risk if the three year assignment period has not yet expired.

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

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

**E. Reporting Credits**

Refer to the Assigned Risk Company Procedures Manual for the procedure outlining the reporting of all credits.