

2002-10 Implementation of amendments to 211 CMR 94.00

TO: All Massachusetts Private Passenger Automobile Insurers
FROM: Julianne M. Bowler, Commissioner of Insurance
DATE: June 12, 2002
RE: Implementation of amendments to 211 CMR 94.00

In November, 2001 the Automobile Insurers Bureau proposed changes to 211 CMR 94.00, the regulation addressing mandatory pre-insurance inspections of private passenger motor vehicles. A hearing on the proposed changes took place on April 2, 2002, and the regulation, in final form, was published in the Massachusetts Register of May 10, 2002, and took effect on that day. At no time during the review process did the AIB or any individual insurer request a future effective date for the regulatory changes.

The AIB thereafter asked to postpone the effective date of those changes to permit the companies to reprogram their computer systems and to set up the additional methods for providing lists of inspection sites to consumers that the regulation allows. Rather than amend the regulation, we are issuing this bulletin on procedures for phasing-in the new requirements.

1. Insurers are expected to complete the reprogramming of their systems promptly and, in any event, by August 15, 2002.
2. Insurers must immediately train their staff and their agents to take appropriate steps to override notices directed to consumers that do not comply with the requirements of the revised regulation.
3. Insurers must promptly develop systems for notifying consumers of inspection sites that comply with the new regulation. Such systems shall be in place by August 15. In the interim, they may continue to provide that information in the form of hard copy.

So long as insurers comply with the timetables in this bulletin, the Division will not take any enforcement action against insurers for failure to comply immediately with the requirements of the regulation, as amended.

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211 CMR 94.00: Mandatory Pre-Insurance Inspection of Private Passenger Motor Vehicles

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94.01: Authority

211 CMR 94.00 is issued pursuant to the authority granted the Commissioner of Insurance by M.G.L. c. 175, § 113S.

94.02: Scope and Purpose

The purpose of 211 CMR 94.02 is to establish standards and procedures for the inspections of certain used cars prior to the issuance by insurers of physical damage insurance coverages. 211 CMR 94.00 applies to all private passenger motor vehicles insured in the Commonwealth unless specifically exempted or waived under 211 CMR 94.00.

94.03: Definitions

As used in 211 CMR 94.00, the following words will have the meanings indicated:

Applicant means the named insured, as defined in the Standard Massachusetts Motor Vehicle Insurance Policy or an applicant for a motor vehicle liability policy or bond.

Authorized representative means any person or legal entity, other than the applicant, authorized by an insurer to conduct pre-insurance inspections pursuant to 211 CMR 94.00 and may include an employee of the insurer, or a producer or inspection service.

Book of business means all motor vehicle insurance written by one producer with one insurer.

Certificate of Mailing means a notice by regular mail with a certificate of mailing endorsed by the United States Postal Service.

Commissioner means the Commissioner of Insurance appointed under the provisions of M.G.L.c. 26, § 6, or his or her designee.

Division means the Division of Insurance within the Department of Banking and Insurance.

Existing Customer means an applicant for a motor vehicle liability policy or bond who has been insured for three years or longer, without interruption, under a motor vehicle liability policy or policies which include(s) physical damage coverage, issued by the insurer to which the application is submitted. An existing customer shall include any applicant involuntarily transferred to another insurer due to the applicant's original insurer's withdrawal from the Commonwealth, if the applicant otherwise qualifies under 211 CMR 94.00.

Inspection service means any person or legal entity, other than the applicant, designed and operated to perform inspections required by 211 CMR 94.00 and which is approved by the insurer. In determining whether to approve an inspection service an insurer may take into consideration the service's professionalism, efficiency and cost effectiveness.

Insurer means any insurance company authorized to write motor vehicle insurance in the Commonwealth.

Motor vehicle liability policy or bond means an insurance policy or bond as defined in M.G.L.c. 90, §§ 34A, 34O, and M.G.L. c. 175.

Nonowned motor vehicle means a private passenger motor vehicle in the possession of the applicant or being operated by the applicant which is neither owned by nor furnished for the regular use of either the applicant or any relative (as defined in the policy) other than a temporary substitute motor vehicle, as defined below.

Physical damage coverage means the optional coverages in a motor vehicle liability policy or bond for collision or limited collision and/or fire and theft or so-called comprehensive coverages as defined in M.G.L. c. 90, § 34(O) and M.G.L. c. 175, § 113O.

Private passenger motor vehicle means any owned or leased four-wheeled motor vehicles including, but not limited to, sedans, coupes, hatchbacks, station wagons, jeep-type vehicles, pick-up trucks, panel trucks, delivery sedans and vans, except vehicles which have a gross weight in excess of 8,000 pounds.

Producer means an agent or broker licensed pursuant to M.G.L. c. 175, §§ 163 or 166, to write property and casualty insurance in the Commonwealth, including a representative producer as defined by the rules for the Commonwealth Automobile Reinsurers established pursuant to M.G.L. c. 175, § 113H.

Temporary substitute motor vehicle means any private passenger motor vehicle not owned by the applicant, which is used by the applicant, with the permission of the owner, as a temporary substitute due to breakdown, repair, servicing, loss or destruction of the applicant's own motor vehicle.

94.04: Mandatory Inspection Requirements

(1) No motor vehicle liability policy or endorsement insuring a private passenger motor vehicle for physical damage coverage, shall be issued or renewed in the Commonwealth unless the insurer has inspected the motor vehicle in accordance with 211 CMR 94.00.

(2) Physical damage coverage shall not be effective on an additional or replacement motor vehicle under an existing policy, unless otherwise exempted, until the insurer has inspected the motor vehicle in accordance with 211 CMR 94.00.

94.05: Exemptions to Inspection Requirement

(1) The requirement of an inspection *shall not* apply to the following:

(a) a new, unused motor vehicle from a franchised automobile dealership where the insurer is provided with either: a copy of the bill of sale which contains a full description of the motor vehicle including all options and accessories; or a copy of the RMV Form 1 provided by the Registry of Motor Vehicles, which establishes the transfer of ownership from the dealer to the customer and a copy of the window sticker or the dealer invoice showing the itemized options and equipment in addition to the total retail price of the vehicle. The physical damage coverage on such new, unused motor vehicle shall not be suspended during the term of the policy due to the applicant's failure to provide the required documents. Payment of a claim, however, shall be conditioned upon the receipt by the insurer of such documents and no physical damage loss occurring after the effective date of the coverage shall be payable until the documents are provided to the insurer. If the above documents are not submitted by the applicant at least 60 days prior to the applicant's annual renewal date, the insurer, upon renewal of the physical damage coverage, must require an inspection as set forth in 211 CMR 94.00;

(b) the applicant is an existing customer;

(c) the motor vehicle is already insured for such physical damage coverages with the insurer by the applicant;

(d) an inspection is waived by the insurer pursuant to 211 CMR 94.06;

- (e) a temporary substitute motor vehicle;
- (f) a motor vehicle which is leased for less than six months, provided the insurer receives the lease or rental agreement containing a description of the leased motor vehicle including its condition. Payment of a physical damage claim shall be conditioned upon receipt of the lease or rental agreement;
- (g) when requiring an inspection would cause a serious hardship to the insurer or the applicant and such hardship is documented in the applicant's policy record; or
- (h) when the insurer has no inspection facility or authorized representative either in the city or town in which the motor vehicle is principally garaged or within five miles of said city or town.

(2) An insurer shall indicate in the applicant's policy record the reason a vehicle is being exempted from the inspection requirement under 211 CMR 94.00.

(3) An insurer may require an inspection of a motor vehicle otherwise exempt pursuant to 211 CMR 94.05(1) provided that the decision to inspect such motor vehicle is reasonable and supported by objective facts. The decision to require such an inspection shall not be based on the age, race, sex, or marital status of the applicant or the customary operators of the vehicle, the principal place of garaging, or the fact that the policy has been ceded to the residual market mechanism. A written record of the reasons for requiring an inspection, pursuant to 211 CMR 94.05(3) shall be placed in the applicant's policy record.

94.06: Waiver of Inspection

- (1) An insurer may waive an inspection under any of the following circumstances:
 - (a) for policies issued or renewed during calendar year 2002, all 1992 and older model year vehicles. For policies issued or renewed during each calendar year thereafter, the applicable model year shall be moved forward by one year. For example: in 2002 an insurer must inspect 1993 and newer model year vehicles and in 2003 an insurer must inspect 1994 and newer model year vehicles. An insurer may elect to inspect specified vehicles included within this waiver. Such exceptions to this optional waiver must be based on underwriting criteria uniformly applied;
 - (b) where a nonowned motor vehicle is insured under a policy providing physical damage coverage issued by an insurer which has inspected such motor vehicle in accordance with the provisions of 211 CMR 94.00;

- (c) where the insured motor vehicle is insured under a commercially-rated policy which insures a fleet of five or more motor vehicles owned by the same person or legal entity;
- (d) when a producer is transferring a book of business from one insurer to one or more insurers; or
- (e) when an individual applicant's coverage is being transferred by an independent insurance agent to a new insurer and said agent provides the new insurer with a copy of the inspection report completed on behalf of the previous insurer, provided the independent agent represents both insurers, and the insured vehicle was physically inspected by the previous insurer. However, if the new insurer does not receive a copy of the inspection report 60 days prior to the first annual renewal date, the insurer must, upon renewal of the physical damage insurance, require an inspection as set forth in 211 CMR 94.00; or
- (f) When the motor vehicle is insured for physical damage on the applicant's expiring Massachusetts Automobile Insurance Policy, or when a copy of a prior Pre-Insurance Inspection is provided ; or
- (g) When the applicant has been the customer of the producer for at least three (3) years under a Massachusetts Automobile Insurance Policy which included physical damage coverage.

(2) Any decision to waive or not to waive an inspection pursuant to 211 CMR 94.00, shall not be based on the age, race, sex, or marital status of the applicant or the customary operators of the vehicle, the principal place of garaging, or the fact that a policy has been ceded to the residual market mechanism.

(3) An insurer shall indicate in the applicant's policy record the reason a waiver has been granted.

94:07: Deferral of Inspection

(1) An insurer may defer an inspection for ten calendar days (not including legal holidays and Sundays) following the effective date of coverage or the date on which the insurer or the producer of record mailed the Notice of Mandatory Pre-Insurance Inspection Requirement (Form B) whichever is later on new business and on additional or replacement vehicles to an existing policy, if an inspection at the time of the request for coverage would create a serious inconvenience for the applicant.

(2)

(a) When an inspection is deferred pursuant to 211 CMR 94.07(1) or (4), an insurer, through its producer, shall either:

1. immediately obtain the prescribed acknowledgement (Form D) signed by the applicant if the applicant has applied for coverage in person; or
2. immediately confirm physical damage coverage and remind the applicant of the inspection requirement on a prescribed notice letter (Form B) if the applicant has applied for coverage either by mail or by phone.

(b) In addition to the notice requirements of 211 CMR 94.07(2)(a), the insurer, through its producer, shall furnish the applicant, at the time coverage is effected, with a list of inspection sites where the inspection can be conducted. The list of inspection sites may be provided in writing, through a toll free number or by electronic access, as convenient for the applicant. The location of an inspection site or sites and the consequences of the applicant's failure to obtain a timely inspection shall be furnished immediately to the applicant either in person, if the applicant has applied for coverage in person, or by telephone, if the applicant has applied for coverage by phone. Documentation of such notice, including the name of the person giving the notice must be contained in the applicant's policy record.

(3) Producers must use the prescribed NOTICE OF MANDATORY PRE-INSURANCE INSPECTION REQUIREMENT letter (Form B) or the prescribed ACKNOWLEDGEMENT OF REQUIREMENT FOR PRE-INSURANCE INSPECTION letter (Form D) (see 211 CMR 94.16) and immediately send a copy to the insurer. A copy of the confirmation letter addressed to the applicant, and Certificate of Mailing thereof, or the completed acknowledgment letter shall be retained by the producer in the applicant's policy record. In the case of a so-called courtesy transfer, the producer confirming coverage shall be responsible for the immediate notification to the applicant pursuant to 211 CMR 94.07(2)(a)1. above, unless the application for coverage is submitted by a person other than the applicant. In such cases, the producer of record shall remain responsible for notification pursuant to 211 CMR 94.07(2)(a)2. and 94.07(2)(b). The producer confirming coverage shall immediately forward a copy of the acknowledgement (Form D) to the producer of record who shall then be responsible for forwarding a copy to the insurer as required by 211 CMR 94.07(3).

(4) If the insurer is required, pursuant M.G.L c. 175, s. 113H, to provide physical damage coverage at the option of the applicant, it shall provide, upon an applicant's request for such physical damage coverage, immediate coverage and may defer the inspection for the ten calendar days (not including legal holidays and Sundays) following the effective date of coverage or the date on which the insurer or the producer of record

mailed the Notice of Mandatory Pre-Insurance Inspection Requirement (Form B) whichever is later.

(5) Any decision to defer or not to defer an inspection pursuant to 211 CMR 94.00 shall not be based on the age, race, sex, or marital status of the applicant or the customary operators of the vehicle, the principal place of garaging, or the fact that a policy has been ceded to the residual market mechanism.

94.08: Standards and Procedures for Inspections

(1) Inspections required or permitted pursuant to 211 CMR 94.00 shall be made by a designated authorized representative of the insurer at a time and place reasonably convenient to the applicant. A reasonably convenient time shall include, in addition to customary business hours, sufficient early morning, evening and weekend hours. A reasonably convenient place shall not be more than five miles from the city or town where the motor vehicle is principally garaged.

(2)

- (a) Any inspection authorization forms issued by the insurer to the applicant, for presentation to the authorized representative, *shall not* contain the Vehicle Identification Number (VIN) of the vehicle to be inspected.
- (b) The inspection shall:
 - 1. be recorded on the prescribed MOTOR VEHICLE PRE-INSURANCE INSPECTION REPORT (Form A) (See 211 CMR 94.16);
 - 2. include two color photographs of the motor vehicle, taken as directed on the inspection report, which shall be attached to the report;
 - 3. include a close-up color photograph (using a special camera attachment if necessary) showing the Vehicle Identification Number (VIN) located on the Environmental Protection Agency/Federal Certification Label (EPA) sticker affixed to the driver's side door jamb. The photograph must be of sufficient clarity that the information contained on the EPA sticker and the VIN is legible. If the EPA sticker is damaged, faded, missing or otherwise not legible, a photograph of the EPA sticker or of the area of the door jamb where the sticker is normally located, is still required.
- (c) The authorized representative may take additional photographs showing any damaged areas, which shall also be attached to the report.
- (d) The original report and photographs shall be immediately sent to the insurer who shall retain the report and photographs in the applicant's policy record for three years from the date of the inspection, except as provided by 211 CMR

94.08(6)(d). The authorized representative shall also provide a copy of the report, without photographs, to the applicant at the time of the inspection.

(3) The insurer shall maintain an up-to-date list of all authorized representatives and inspection sites performing inspections for the insurer. The list must include the names, addresses and business phone numbers of all authorized representatives and the insurer shall make such list accessible to the Division upon request.

(4) There shall be no charge either directly or indirectly to the applicant in connection with an inspection, except that such charge may be considered in accordance with M.G.L. c. 175, § 113B or other applicable laws.

(5) The competency and trustworthiness of the authorized representative in the conduct of the inspections provided for in 211 CMR 94.08 shall be the responsibility of the insurer.

(6) An insurer shall utilize authorized representatives who shall:

- (a) verify the accuracy, completeness and signature of the inspector for each inspection report in writing;
- (b) maintain a control system on such inspection reports including the use of sequentially numbered reports;
- (c) retain and supply to an insurer, upon request, a copy of any inspection report which was completed within three years of the date of inspection.
- (d) provide an optional service, on an additional fee basis, to insurers whereby the original inspection reports and photographs are retained by the authorized representative who shall maintain such original inspection reports and photographs in a manner so as to facilitate rapid retrieval for a period of at least three years from the date of inspection. A copy of the inspection report shall be provided to the insurer. The authorized representative shall, upon the request of the insurer, mail or deliver the original inspection report and photographs to the insurer within two business days of such request.

(7)

(a) The inspection report and photographs shall be used by the insurer to document previous damage, prior condition, options and mileage of the motor vehicle on physical damage claims whenever:

- 1. the appraisal indicates prior damage;
- 2. the vehicle is a total loss or unrecovered theft; or
- 3. the damage exceeds \$1,000.

- (b) A copy of the inspection report and photographs must be utilized, and made a part of the insurer's claim file, in the settlement of all total loss claims. The inspection report must be made a part of the claim file regardless of whether or not the payment is reduced based on the information contained therein. Such inspection report must come from the applicant's policy record.

94.09 Standards for Suspension of Physical Damage Coverages

(1) If the inspection is not conducted prior to the expiration of the ten calendar days deferral period specified in 211 CMR 94.07(1), motor vehicle physical damage coverage on the motor vehicle shall be suspended at 12:01 a.m. of the day following the tenth calendar day, and such suspension shall continue until the inspection is effected. The insurer must inspect the motor vehicle and reinstate physical damage coverage (effective at the time of the inspection) if the applicant thereafter requests an inspection. The applicant's ability to reinstate the physical damage coverage upon inspection, however, shall lapse if the insurer has already made a pro-rata premium adjustment pursuant to 211 CMR 94.09(2). Thereafter a reinstatement shall only be effective upon inspection *and* payment by the applicant to the insurer of the adjusted premium for the physical damage coverage in full or in accordance with the insurer's normal payment plan, at the insurer's option.

(2) Whenever physical damage coverage is suspended, the insurer shall, between the 21st and 30th calendar day after the effective date of the coverage or the date on which the insurer or the producer of record mailed the Notice of Mandatory Pre-Insurance Inspection Requirement (Form B) whichever is later, mail to the applicant, the producer of record, and any lienholders a prescribed NOTICE OF SUSPENSION OF PHYSICAL DAMAGE COVERAGE (Form C) (see 211 CMR 94.16). The insurer shall complete a certificate of mailing of the suspension to the applicant and shall retain the certificate and a copy of the suspension in the applicant's policy record. Whenever there is a suspension of physical damage coverage for more than 10 days, the insurer shall make a pro-rata premium adjustment (return premium or credit) which shall be mailed to the applicant no later than 45 days after the effective date of the suspension.

(3) If the motor vehicle is not inspected pursuant to this regulation due to the fault of the insurer, or if its producer fails to give the verbal or telephone notice required by 211 CMR 94.07(2) of this regulation or mail or deliver the NOTICE OF MANDATORY PRE-INSURANCE INSPECTION REQUIREMENT (Form B) or obtain the ACKNOWLEDGEMENT OF REQUIREMENTS FOR PRE-INSURANCE INSPECTION (Form D) as set forth in 211 CMR 94.07(2) and the insurer or the producer of record has failed to issue the Mandatory Pre-Insurance Inspection Requirement (Form B), physical damage coverage on the motor vehicle shall not lapse. The failure of the insurer to act promptly does not relieve it of its obligation to inspect. In the event that the producer of record fails to properly communicate to the applicant the Mandatory Pre-Insurance Inspection Requirement (Form B) or an Acknowledgement of Requirement for Pre-Insurance Inspection (Form D), the insurer or the producer of record must issue the Mandatory Pre-Insurance Inspection Requirement (Form B) and the applicant has ten

calendar days to comply. An insurer's failure, however, to comply with the provisions of 2111 CMR 94.09(2) does not restore physical damage coverage, but shall subject the insurer to a penalty pursuant to 211 CMR 94.12.

94.10: Inspection Services

(1) Inspection services shall maintain a record of the name, address and signature of all persons authorized by such inspection service to perform inspections, prior to that person performing any inspections pursuant to this regulation. Such record shall be made available to the Division upon request.

(2) An inspection service must be approved by the insurer for which it will be conducting inspections. In determining whether to approve an inspection service an insurer may take into consideration the service's professionalism, efficiency and cost effectiveness.

94.11: Conflicts of Interest

An authorized representative shall not be deemed trustworthy if there exists any conflict of interest which may prevent him or her from conducting a thorough and accurate inspection. It shall be a conflict of interest for an authorized representative to accept, in connection with an inspection, anything of value from any source other than the insurer.

94.12: Enforcement.

(1) A violation of any provision of 211 CMR 94.00 by an insurer shall be deemed a violation under the statute or regulation under which such insurer is licensed and shall be sufficient grounds, after hearing, for the imposition of fines as prescribed in the licensing statute or regulation. Any such violation shall be considered an unfair and deceptive act or practice in violation of M.G.L. c. 176D.

(2) A violation of any provision of 211 CMR 94.00 by an authorized representative shall be deemed a violation under the statute or regulation under which such authorized representative is licensed and shall be sufficient grounds, after hearing, for the suspension or revocation of such license and for the imposition of fines as prescribed in the licensing statute or regulation. Any such violation shall also be considered an unfair and deceptive act or practice in violation of M.G.L. c. 176D.

(3) The competency and trustworthiness of all authorized representatives in the conduct of the inspections provided by 211 CMR 94.00 shall be the responsibility of the insurer.

(4) Nothing contained in 211 CMR 94.00 shall be deemed to preclude the applicant, the Commissioner or the Attorney General from pursuing any other remedy or penalty provided by law for a violation of this regulation, including any remedy provided under M.G.L. c. 93A or M.G.L. c. 176D.

94.13: Records and Audits

(1) Insurers shall maintain records as to the costs and savings related to 211 CMR 94.00 and shall make such records available to the Division upon request.

(2) Insurers shall be responsible for the monthly auditing of inspection reports received from their authorized representatives and shall provide such authorized representatives, excluding producers, with monthly status reports indicating the total number of reports received including the number of incomplete or incorrect reports received.

94.14: Effective Date

211 CMR 94.00 shall become effective on March 1, 1989.

94.15: Severability

If any section or portion of a section of 211 CMR 94.00 or its application to any person, entity or circumstance is held invalid by any court, the remainder of 211 CMR 94.00 or the applicability of such provision to other persons, entities or circumstances shall not be effected thereby.

94.16: Forms

Sample forms for Motor Vehicle Pre-Insurance Inspection Report (Form A), Notice of Mandatory Pre-Insurance Inspection Requirement (Form B), Notice of Suspension of Physical Damage Coverage (Form C) and Acknowledgment of Requirement for Pre-Insurance Inspection (Form D) as referred to in 211 CMR 94.00 are available from:

Division of Insurance - Legal Section
One South Station
Boston, MA 02110

REGULATORY AUTHORITY

- 211 CMR 94.00: M.G.L. c. 175, § 113S.