

211 CMR: DIVISION OF INSURANCE

211 CMR 94.00: 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 94.00 is to establish standards and procedures for the inspection of certain motor vehicles prior to Insurers' issuance of Physical Damage Coverages. 211 CMR 94.00 applies to all Private Passenger Motor Vehicles insured in the Commonwealth of Massachusetts (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 or individual applying as the named insured, as that term is defined in a Motor Vehicle Liability Policy.

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, an insurance producer of the Insurer, or an Inspection Service.

Book of Business means all Motor Vehicle Liability Policies written by one insurance 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 created pursuant to M.G.L. c. 26, § 1.

Existing Customer means an Applicant for a Motor Vehicle Liability Policy 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 Applicant's application is submitted.

Inspection Service means any person or legal entity, other than the Applicant, authorized by the Insurer to perform inspections required by 211 CMR 94.00. In determining whether to authorize an Inspection Service an Insurer may take into consideration the Inspection Service's professionalism, efficiency and cost effectiveness.

Insurer means any insurance company authorized to write Motor Vehicle Liability Policies in the Commonwealth.

Motor Vehicle Liability Policy means a motor vehicle liability policy, including the coverage selections page and any endorsements, or motor vehicle liability 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 a Motor Vehicle Liability Policy), other than a Temporary Substitute Motor Vehicle, as defined in 211 CMR 94.03.

Physical Damage Coverage means the optional coverages in a Motor Vehicle Liability Policy for collision or limited collision and/or fire and theft or so-called comprehensive coverages, as defined in M.G.L. c. 90, § 34O and M.G.L. c. 175, § 113O.

Private Passenger Motor Vehicle means any owned or leased four-wheeled motor vehicle including, but not limited to, sedans, coupes, hatchbacks, station wagons, jeep-type vehicles, pick-up trucks, panel trucks, delivery sedans and vans, except motor vehicles which have a gross weight in excess of 10,000 pounds.

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 the breakdown, repair, servicing, loss or destruction of the Applicant's own motor vehicle.

#### 94.04: Inspection Requirements

(1) No Motor Vehicle Liability Policy for a Private Passenger Motor Vehicle including 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 Private Passenger Motor Vehicle under an existing Motor Vehicle Liability Policy until the Insurer has inspected the motor vehicle in accordance with 211 CMR 94.00.

94.05: Mandatory Waiver of Inspection Requirements

(1) The Insurer shall waive an inspection of a Private Passenger Motor Vehicle under the following circumstances:

(a) the Private Passenger Motor Vehicle is 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 (RMV), 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 motor vehicle. The Physical Damage Coverage on such new, unused Private Passenger Motor Vehicle shall not be suspended during the term of the Motor Vehicle Liability Policy due to the Applicant's failure to provide the required documents. Payment of a Physical Damage Coverage claim, however, shall be conditioned upon the receipt by the Insurer of such documents and no Physical Damage Coverage loss occurring after the effective date of the coverage shall be payable until the documents are provided to the Insurer. If the documents are not submitted by the Applicant at least 60 days prior to the Applicant's policy renewal date, the Insurer, upon renewal of the Physical Damage Coverage, shall require an inspection as set forth in 211 CMR 94.00;

(b) the Applicant for Physical Damage Coverage is an Existing Customer;

(c) the Private Passenger Motor Vehicle already is insured for such Physical Damage Coverage with the Insurer by the Applicant;

(d) the Insurer waives the inspection pursuant to 211 CMR 94.06;

(e) the Private Passenger Motor Vehicle is a Temporary Substitute Motor Vehicle;

(f) the Private Passenger Motor Vehicle is leased for less than six months, provided the Insurer receives a copy of the lease or rental agreement containing a description of the leased motor vehicle including its condition. Payment of a Physical Damage Coverage claim shall be conditioned upon receipt of a copy of the lease or rental agreement;

(g) the inspection would cause a serious hardship to the Insurer or the Applicant; or

(h) the Insurer has no Authorized Representative or Inspection Service either in the city or town in which the Private Passenger Motor Vehicle is principally garaged, or within five miles of said city or town.

(2) An Insurer may require an inspection of a Private Passenger Motor Vehicle otherwise exempt from such inspection pursuant to 211 CMR 94.05(1) provided that the decision to inspect is based on underwriting criteria uniformly applied, and such decision is reasonable and supported by objective facts. The decision to require such an inspection shall not be based on the age, race, sex, marital status, creed, national origin, religion, occupation, income, education, credit information or homeownership of the Applicant or the customary operators of the motor vehicle, the principal place where the motor vehicle is garaged, or the fact that the Motor Vehicle Liability Policy has been issued through the residual market.

An Insurer shall indicate the reasons for requiring an inspection, pursuant to 211 CMR 94.05(2), in the Applicant's policy record.



94.06: Optional Waiver of Inspection Requirements

- (1) An Insurer may waive an inspection of a Private Passenger Motor Vehicle under any of the following circumstances:
- (a) for Motor Vehicle Liability Policies issued or renewed with Physical Damage Coverage during the current calendar year, when the difference between the current calendar year and the model year designated by the manufacturer of the motor vehicle is ten years or more. For example, if the calendar year is 2002, the Insurer may waive the inspection for all 1992 and older model year motor vehicles. An Insurer may elect to inspect specified motor vehicles included within this optional waiver. Such exceptions to this optional waiver shall be subject to underwriting criteria uniformly applied, and shall be reasonable and supported by objective facts. The decision to require such an inspection shall not be based on the age, race, sex, marital status, creed, national origin, religion, occupation, income, education, credit information or homeownership of the Applicant or the customary operators of the motor vehicle, the principal place where the motor vehicle is garaged, or the fact that the Motor Vehicle Liability Policy has been issued through the residual market;
  - (b) where a Nonowned Motor Vehicle is insured under a Motor Vehicle Liability 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 Private Passenger Motor Vehicle is insured under a commercially-rated Motor Vehicle Liability Policy;
  - (d) when an insurance producer is transferring a Book of Business from one Insurer to one or more Insurers;
  - (e) when an insurance producer is transferring an individual Applicant's coverage from one Insurer to another Insurer. The new Insurer may require the insurance producer to provide the inspection information completed on behalf of the former Insurer, provided the Private Passenger Motor Vehicle previously was inspected by the former Insurer. If the new Insurer does not receive the inspection information 60 days prior to the first policy renewal date of the Physical Damage Coverages, the new Insurer may require an inspection as set forth in 211 CMR 94.00 prior to the first policy renewal;
  - (f) when the Private Passenger Motor Vehicle is insured for Physical Damage Coverage on the Applicant's expiring or cancelled Motor Vehicle Liability Policy, providing there is no lapse in coverage, or when the prior pre-insurance inspection information is provided; or
  - (g) when the Applicant has been the customer of the insurance producer of record or the Insurer for at least three years under a Motor Vehicle Liability Policy which included Physical Damage Coverage.
- (2) An Insurer also may waive an inspection if it files a plan for waiving pre-insurance inspections on Private Passenger Motor Vehicles, subject to the approval of the Commissioner. Such pre-insurance inspection plans shall comply with the following requirements:
- (a) the Insurer's plan shall comply with the provisions in 211 CMR 94.05 and 211 CMR 94.08(4);
  - (b) the Insurer's plan shall require the following documentation be included in the Insurer's policy records for the Applicant:
    - 1. The reason for requiring a pre-insurance inspection;
    - 2. The reason for any exceptions to any other provisions of the Insurer's plan; and
    - 3. The notification(s) made to the Applicant in connection with any required pre-insurance inspections.



(c) the decision criteria for waiving the pre-insurance inspections required by 211 CMR 94.00 set forth in the Insurer's plan shall not consider the Applicant's membership in any group subject to a group marketing plan approved by the Commissioner pursuant to M.G.L. c. 175, § 193R;

(d) the decision criteria for waiving the pre-insurance inspections required by 211 CMR 94.00 set forth in the Insurer's plan shall not be based on the loss ratio for an insurance producer, where such loss ratio is calculated using premium and loss experience incurred prior to December 31, 2008 for personally-rated Motor Vehicle Liability Policies;

(e) any provisions of the Insurer's plan that permit the Insurer to elect to inspect a Private Passenger Motor Vehicle for which inspection customarily is waived under such plan shall be based on underwriting criteria uniformly applied, and the decision to inspect such motor vehicle shall be reasonable and supported by objective facts. The decision to require such an inspection shall not be based on the age, race, sex, marital status, creed, national origin, religion, occupation, income, education, credit information or homeownership of the Applicant or the customary operators of the motor vehicle, the principal place where the motor vehicle is garaged, or the fact that the Motor Vehicle Liability Policy has been issued through the residual market; and

(f) any provisions of the Insurer's plan that set forth a period of time for the completion of a pre-insurance inspection following the effective date of a Motor Vehicle Liability Policy shall be based on underwriting criteria uniformly applied, and shall be reasonable and supported by objective facts. The period of time for obtaining the pre-insurance inspection shall not be based on the age, race, sex, marital status, creed, national origin, religion, occupation, income, education, credit information or homeownership of the Applicant or the customary operators of the motor vehicle, the principal place of where the motor vehicle is garaged, or the fact that the Motor Vehicle Liability Policy has been issued through the residual market.

(3) An Insurer's decision to waive or not to waive a pre-insurance inspection of a Private Passenger Motor Vehicle pursuant to 211 CMR 94.06(1) or (2) shall be based on underwriting criteria uniformly applied and shall be reasonable and supported by objective facts. The decision to require a pre-insurance inspection shall not be based on the age, race, sex, marital status, creed, national origin, religion, occupation, income, education, credit information or homeownership of the Applicant or the customary operators of the motor vehicle, the principal place where the motor vehicle is garaged, or the fact that the Motor Vehicle Liability Policy has been issued through the residual market.

(4) When an Insurer does not waive the pre-insurance inspection requirement, the Insurer shall indicate the underlying reason in the Applicant's policy record.

94.07: Deferral of Inspection Requirements

(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 insurance producer of record issued notice to the Applicant that the Private Passenger Motor Vehicle must be inspected, whichever is later, if an inspection at the time of the request for coverage would create a serious inconvenience for the Applicant.

(2) If the Insurer is required, pursuant to M.G.L c. 175, § 113H, to provide Physical Damage Coverage at the option of the Applicant, it shall provide immediate coverage upon an Applicant's request for such Physical Damage Coverage, and may defer the inspection for ten calendar days (not including legal holidays and Sundays) following the effective date of such coverage or the date on which the Insurer or the insurance producer of record issued notice to the Applicant that the Private Passenger Motor Vehicle must be inspected, whichever is later.

- (3) (a) When an inspection is deferred pursuant to 211 CMR 94.07(1) or (2), an Insurer or its insurance producer, shall either:
1. immediately obtain written acknowledgment from the Applicant if the Applicant has applied for coverage in person; or
  2. immediately confirm Physical Damage Coverage on the Private Passenger Motor Vehicle and issue a notice to the Applicant, if the Applicant has applied for coverage either by mail, phone, or internet.
- (b) In addition to the notice requirements of 211 CMR 94.07(3)(a), the Insurer, or its insurance producer, shall furnish the Applicant, at the time Physical Damage Coverage is effected, with a list of Inspection Services, including location(s), at which the inspection can be conducted. The list of Inspection Services may be provided to the Applicant in writing, through a toll free number or by electronic access, as convenient for the Applicant. The Applicant immediately shall be notified of the location of the Inspection Service(s), as well as the consequences of the Applicant's failure to obtain a timely inspection of the motor vehicle. Documentation of such notice, including the name of the person providing such notice to the Applicant, shall be contained in the Applicant's policy record.
- (4) Insurance producers immediately shall notify the Insurer that the Applicant has acknowledged or has been issued notice that the Private Passenger Motor Vehicle must be inspected in accordance with 211 CMR 94.07(3)(a). In the case of a so-called courtesy transfer, the insurance producer confirming Physical Damage Coverage shall be responsible for obtaining the Applicant's acknowledgment pursuant to 211 CMR 94.07(3)(a)1., unless the application for Physical Damage coverage is submitted by a person other than the Applicant. In such cases, the insurance producer of record shall remain responsible for notification pursuant to 211 CMR 94.07(3)(a)2 and 94.07(3)(b). The insurance producer confirming coverage shall notify immediately the insurance producer of record who then shall be responsible for notifying the Insurer as required by 211 CMR 94.07(4).
- (5) Any decision to defer or not to defer an inspection pursuant to 211 CMR 94.07 shall be based on underwriting criteria uniformly applied and shall be reasonable and supported by objective facts. The decision to defer or not to defer an inspection shall not be based on the age, race, sex, marital status, creed, national origin, religion, occupation, income, education, credit information, or homeownership of the Applicant or the customary operators of the motor vehicle, the principal place where the motor vehicle is garaged, or the fact that the Motor Vehicle Liability Policy has been issued through the residual market.

94.08: Standards and Procedures for Inspection

- (1) Pre-insurance inspections required or permitted pursuant to 211 CMR 94.00 shall be conducted by an 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 Private Passenger Motor Vehicle is principally garaged.
- (2) (a) Any forms issued by the Insurer to the Applicant for presentation to the Authorized Representative shall not contain the Vehicle Identification Number (VIN) of the motor vehicle to be inspected.



- (b) The inspection shall:
  - 1. be recorded in a format mutually agreeable to the Authorized Representative and the Insurer;
  - 2. include two color photographs of the Private Passenger Motor Vehicle, taken as directed by the Insurer;
  - 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 shall 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 normally is located still is required.
- (c) The Authorized Representative shall take additional photographs showing any damaged areas of the Private Passenger Motor Vehicle, as required by the Insurer.
- (d) The inspection information and photographs shall be sent immediately to the Insurer which shall retain this information in the Applicant's policy record for three years from the date of the inspection, except as provided by 211 CMR 94.08(6)(c). The Authorized Representative shall also provide a receipt to the Applicant at the time of the inspection indicating that the inspection has been completed and the date upon which it has been completed.
- (3) The Insurer shall maintain an up-to-date list of all Authorized Representatives and Inspection Service(s) performing inspections for the Insurer. The list shall include the names, addresses and business telephone numbers of all Authorized Representatives and Inspection Services, and the Insurer shall make such list available to the Division upon request.
- (4) There shall be no additional or separate charge to the Applicant in connection with an inspection of a Private Passenger Motor Vehicle.
- (5) 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.
- (6) An Insurer shall utilize Authorized Representatives who shall:
  - (a) verify the accuracy, completeness and signature of the inspector for each inspection in writing;
  - (b) maintain a control system on such inspections, and maintain records of the inspection information for a period of time agreed to by the Insurer and the Authorized Representative;
  - (c) provide an optional service, on an additional fee basis, to Insurers whereby the original inspection information and photographs are retained by the Authorized Representative, who shall maintain such original inspection information and photographs in a manner so as to facilitate their rapid retrieval for a period of at least three years from the date of inspection. The inspection information and photographs shall be provided to the Insurer. The Authorized Representative shall, upon the request of the Insurer, mail or otherwise deliver the original inspection information and photographs to the Insurer within two business days of such request.
- (7) (a) The inspection information and photographs shall be used by the Insurer to document previous damage, prior condition, options and mileage of the Private Passenger Motor Vehicle on Physical Damage Coverage claims whenever:
  - 1. the appraisal of the motor vehicle indicates prior damage; or
  - 2. the motor vehicle is a total loss or unrecovered theft.

(b) The inspection information and photographs shall be utilized and made a part of the Insurer's claim file in the settlement of all total loss claims. The inspection information and photographs shall be made a part of the claim file regardless of whether payment on the claim is reduced based on such information. Such inspection information shall come from the Applicant's policy record.

94.09: Standards for Suspension of Physical Damage Coverage for Failure to Inspect

(1) If the inspection is not conducted prior to the expiration of the deferral period specified in 211 CMR 94.07(1), Physical Damage Coverage on the Private Passenger Motor Vehicle shall be suspended at 12:01 A.M. of the day following the tenth calendar day allowed by 211 CMR 94.07(1), and shall continue until the inspection is effected. The Insurer shall 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 already has made a *pro-rata* premium adjustment pursuant to 211 CMR 94.09(2). Thereafter, a reinstatement of Physical Damage Coverage only shall be effective upon inspection and payment by the Applicant to the Insurer of the adjusted premium for the Physical Damage Coverage, either in full or in accordance with the Insurer's normal premium payment plan, at the Insurer's option.

(2) Whenever Physical Damage Coverage is suspended, the Insurer shall, within five business days from the effective date of suspension, mail to the Applicant, the insurance producer of record, and any lienholders a notice that Physical Damage Coverage has been suspended under the Motor Vehicle Liability Policy. The Insurer shall complete a Certificate of Mailing of such notice of suspension of Physical Damage Coverage to the Applicant and shall include this information in the Applicant's policy record. Whenever there is a suspension of Physical Damage Coverage for more than ten 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 such suspension.

(3) If the Private Passenger Motor Vehicle is not inspected pursuant to 211 CMR 94.00 because the Insurer or its insurance producer failed to provide the notice(s) or to obtain the acknowledgement(s) required by 211 CMR 94.07(3), Physical Damage Coverage on the Motor Vehicle Liability Policy shall not be suspended. The failure of the Insurer to act promptly does not relieve it of its obligation to inspect the motor vehicle. In the event that the Insurer or its insurance producer fails to comply properly with the notice or acknowledgement required by 211 CMR 94.07(3), the Insurer or the insurance producer shall issue a notice for a pre-insurance inspection and the Applicant has ten calendar days to comply. An Insurer's failure to comply with the provisions of 211 CMR 94.09(2), however, 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 on motor vehicles, prior to that person performing any inspections on behalf of an Insurer pursuant to 211 CMR 94.00. Such record shall be made available to the Division upon request.

(2) An Inspection Service shall be authorized by the Insurer for which it will be conducting inspections. In determining whether to authorize 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 have any conflicts of interest which may prevent him or her from conducting a thorough and accurate pre-insurance inspection on behalf of the Insurer. It shall be a conflict of interest for an Authorized Representative to accept, in connection with an inspection, anything of value for conducting such inspection 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 statutes or regulations under which such Insurer is licensed and shall be sufficient grounds, after hearing, for the imposition of fines as prescribed in the licensing statutes or regulations. Any such violation also shall be considered an unfair or deceptive act or practice in the business of insurance 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 statutes or regulations under which such Authorized Representative is licensed by the Division, if so 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 statutes or regulations. Any such violation also shall be considered an unfair or deceptive act or practice in the business of insurance in violation of M.G.L. c. 176D.

(3) The competency and trustworthiness of all Authorized Representatives in the conduct of 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 211 CMR 94.00, including any remedy or penalty provided under M.G.L. c. 93A or M.G.L. c. 176D.

94.13: Records and Audits

Insurers shall be responsible for auditing pre-insurance inspections received from their Authorized Representatives. Insurers may provide Authorized Representatives with status reports indicating the total number of completed inspections, including the number of inspections that were incomplete or incorrect, at the option of the Insurer.

94.14: 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 of competent jurisdiction, the remainder of 211 CMR 94.00, or the applicability of such provision to other persons, entities or circumstances, shall not be affected thereby.

REGULATORY AUTHORITY

211 CMR 94.00: M.G.L. c. 175, § 113S.