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December 18, 2009

VIA ELECTRONIC AND REGULAR MAIL

Ralph A. Iannaco, President
Commonwealth Automobile Reinsurers
225 Franklin Street
Boston, Massachusetts 02110

Re: Proposed Amendments to Rules 28 and 29 of the Massachusetts Automobile Insurance Plan

Dear Mr. Iannaco:

On November 18, 2009, the Governing Committee of the Commonwealth Automobile Reinsurers ("CAR") voted to amend Rules 28.C .1 and 29. E and F of the Massachusetts Automobile Insurance Plan ("MAIP"). The proposed amendments address the following issues: 1) premium deposits (Rule 28.C.1); 2) new credit factors for policies with effective dates from April 1, 2010 through March 31, 2011 (Rule 29.E); and 3) the household procedure rule (Rule 29.F.2). The proposed amendments were distributed to CAR members and submitted to me for my review. I have carefully reviewed them and am disapproving CAR's proposals for Rule 28.C.1 and Rule 29.E, for the reasons stated below, and approving the proposed amendment to Rule 29.F.2.

Rule 28.C.1

Rule 28.C.1 relates to the deposit premium requirements for MAIP applicants who qualify as Eligible Risks. CAR's proposals require revision to ensure that the MAIP rules are consistent with the statutory requirements for residual market eligibility in G.L. c. 175, §113H ("§113H") and for deposits on motor vehicle insurance policies in G.L. c. 175, §113E ("§113E"). The first paragraph that CAR proposes to add to Rule 28.C.1.a relates not to the calculation of a deposit premium but instead to a condition of eligibility for the MAIP; specifically the satisfaction of any obligation to pay premium owed. For that reason, it should be deleted.¹

¹ MAIP Rule 26.A.3 sets out the conditions for MAIP eligibility, including the requirement that the "applicant , or any person who usually drives the motor vehicle has failed to pay an insurance company any

As support for its proposal to amend Rule 28.C.1, CAR expresses concern that an ARC who receives a MAIP assignment cannot cancel a policy if an applicant has failed to pay premium owed, apparently to a previous insurer. The proposed amendment seeks to require an ARP to collect such unpaid premium and to forward it to the Member to which it is owed. CAR's proposal would expand an ARP's responsibilities and require it to collect unpaid premium for a company with which it does not do business. We believe it is inappropriate to require an ARP to do more than verify that the applicant and any other person who usually drives the motor vehicle do not owe premium for a policy that was in effect during the preceding 12 months, as required by Rule 31.B.3.e., unless the ARP places other business with the company to which the premium is owed.² In other circumstances, although an ARP may choose to assist an applicant in removing non-payment of premium as an impediment to MAIP eligibility, he or she should not be required to serve as a collector for a previous insurer.

The second paragraph in CAR's proposed amendment to Rule 28.C.1.a, and its proposed amendment to Rule 28.C.1.b, relate to determining the deposit premium for, respectively, new and renewal MAIP business. Both sections permit collection of a higher deposit premium from an Eligible Risk if the applicant has had an automobile insurance policy cancelled for non-payment of premium during the preceding 24 months.³ Section 113E sets a maximum limit of 30 percent on motor vehicle insurance deposit premiums, but allows higher deposits if the applicant for insurance "has been in default" for payment of such premium within the past 24 months. Non-payment of premium is a permissible reason for an insurer to cancel a motor vehicle policy, but an ARC's issuance of a notice of cancellation for non-payment will not result in an actual cancellation if the insured pays the overdue premium and any related service charges before the cancellation date in the notice. The text of Rules 28.C.1. a and b requires amendment to clarify that the rules relating to a higher deposit premium apply only if the applicant had a prior motor vehicle policy actually cancelled for non-payment within the past 24 months.

CAR's proposed amendments relating to the permissible higher deposit premium differ depending on whether the policy is new or renewal business. For new business, Rule 28.C.1 now requires an Eligible Risk who has had a policy cancelled for non-payment within the past 24 months, and therefore does not qualify for a payment plan, to make a deposit of the full premium generated using the MAIP rates.⁴ Because of the Lane-Bolling Amendment, for most applicants the actual premium charged by the ARC is significantly less than the MAIP premium. Calculating the deposit premium on the

motor vehicle insurance premiums due or contracted during the preceding twelve months." CAR's proposed first paragraph incorrectly states the process for determining eligibility.

² In the event that the insurer to which money is owed has entered into a Limited Assignment Distribution Agreement ("LADA") under which another company handles some of its motor vehicle insurance business, for purposes of collecting owed premium the LADA would be considered a company with which the ARP places business.

³ Eligible Risks who qualify for a payment plan are now required to make a premium deposit of 25 percent on new business or 20 percent on renewal business. CAR's proposed amendments do not change those percentages.

⁴ The identical requirement is in the current CAR Rules and the proposed amendment. The amendment moves the text from Rule 28.C.1.b to 28.C.1.a.

MAIP rate for the purpose of determining the 100 percent down payment frequently generates deposit premiums in excess of the ultimate premium.⁵ The current rules on deposit premiums burden consumers and we urge CAR to amend Rule 28.C.1.a to alleviate that burden. To improve the accuracy of the deposit premium, we recommend that the rule require a down payment for new business of no more than 80 percent of the estimated MAIP premium rather than the current 100 percent of that premium. The ARC shall send the applicant a notice of any upward or downward adjustments to the deposit premium with the final coverage selections page. The applicant may be required to pay any additional deposit premium within 30 days of the date on the coverage selections page. During that 30-day period an insurer may not cancel a policy for non-payment of premium. The ARC shall return any downward deposit premium adjustment to the applicant within 30 days.

The amendment to Rule 28.C.1.b states that the ARC may elect to require payment of 100 percent of the renewal premium if the policyholder has had a policy cancelled within the past 24 months. The statutory reference incorrectly reflects §113E and should therefore be removed from CAR's proposal.⁶ Each ARC may determine what it will accept as a deposit premium on renewal policies.

I am therefore remanding Rule 28 back to CAR for changes to Rule 28.C.1. that address the above issues.

Rule 29. E.

Rule 29.E requires CAR to review credits for each rate year and to submit them to the Commissioner for approval. MAIP credits are intended to control the size of the residual market and to provide an incentive for companies to voluntarily write private passenger auto insurance in those territories and classifications that would otherwise be disproportionately represented in the MAIP. CAR proposes new credit factors for policies with effective dates from April 1, 2010 through March 31, 2011. It points out that the selected factors represent a 26.4 percent decrease in credit-eligible exposures and a 43.3 percent decrease in available credit premium. CAR states that the new factors reflect residual market share data representing actual MAIP results, and, unlike prior credit year indications, are not heavily weighted by ceded market results. It notes that it selected separate credit factors for experienced and inexperienced drivers, to address the difference in average MAIP premium and concerns about the need for a higher weight on territorial credits to provide an incentive to depopulate urban areas more highly represented in the residual market.

The measurement of the MAIP's volume and of the proportionate representation within it is complicated somewhat by the transition both to the MAIP and competitive rating. The percentage of vehicles insured through the residual market has declined slightly between the nine-month period from January 1, 2008 through September 30, 2008 and the nine-month period beginning January 1, 2009 and ending September 30,

⁵ Based on CAR data through December 14, 2009, approximately 93 percent of policies issued through the MAIP since April 1, 2009 are charged a premium that is lower than the MAIP premium quoted at the time of application.

⁶ Section 113E neither imposes nor prohibits a 100 percent requirement for a renewal premium.

2009.⁷ All else equal, this reduction suggests that it may be appropriate to reduce the number of vehicles that are eligible for the MAIP credit.

The Division has examined market data and considered the effect that CAR's proposed credits will have on operator groups and territories that are disproportionately represented in the residual market. Based on the most recently available proportion of vehicles insured through the residual market, principal operators licensed six years or less and risks in Chelsea, Hyde Park, Dorchester, Roxbury, East Boston, Holyoke, Lowell, Springfield, Lynn, Lawrence, and Brockton continue to be disproportionately represented in the residual market.⁸ The proportion of principal operators licensed six years or less in the residual market is 3.66 times higher than the statewide average; that ratio has changed little since 2005, when it was 3.45. The proportion of risks from the above territories written in the MAIP, as a group, is approximately three times higher than the statewide average; for each individual community the ratio of MAIP policies is at least 2.5 times higher than the statewide average. As with inexperienced operators, since 2005 the relative representation of this group of communities in the residual market is virtually unchanged. The appreciable decline in the proportion of risks insured through the residual market in Hyde Park, Dorchester, Roxbury, East Boston, Charlestown, Lowell and Lawrence, is offset by increases in the relative representation of Lynn and Brockton. Therefore there appears to be a significant and continued need for credits for those operator classes and territories.

The Division's analysis of CAR's proposed changes to Rule 29 finds that its proposal will not serve to reduce the disproportionate share of the above risk class and territories in the MAIP. The Division estimates that CAR's proposal will reduce the credit premium for principal operators licensed six years or less by 67 percent and also reduce the credit premium available in the above communities by 14 percent. Since MAIP quota share and credits are measured on the basis of premium, CAR's proposal is unlikely to increase the voluntary writing of vehicles in these areas.

Transition to the MAIP will not be complete on April 1, 2010. To avoid growth of that market, the credit system must strongly encourage insurers to develop the operations necessary to serve the high risk private passenger motor vehicle insurance markets. Because such competency takes time to acquire, stable market expectations facilitate insurers' willingness to insure high risks voluntarily. While reduction in the overall size of the residual market may warrant some adjustment to the number of credit eligible vehicles, the lack of progress in achieving proportional balance of risk by operator class and territory indicates that the overall level of credit premium should remain relatively stable for the foreseeable future. I am therefore remanding Rule 29 back to CAR for changes to Rule 29.E.2 that satisfy the following criteria:

1. The overall MAIP premium credits shall not decline by more than five percent from the current credits.

⁷ Cession Volume Report, CAR Website.

⁸ Operator classes 17, 20 and 25 comprise principal operators licensed for six years or less; each class continues to be disproportionately represented in the residual market.

2. Credit premium available for the 11 territories noted above, as a group, shall increase by at least 25 percent, and no individual territory in the group shall have a reduction in credit premium of more than 15 percent.
3. Credit premium for principal operators licensed six years or less shall not be reduced by more than 20 percent for that operator group as whole.

In summary, pursuant to my authority under Article X of the CAR Plan of Operation, I am approving CAR's proposed amendment to Rule 29.F and disapproving CAR's proposed amendments to Rule 28.C.1 and to Rule 29.E . Rules 28.C.1 and 29.E are remanded to CAR for revisions that address the Division's concerns and are consistent with its suggestions. CAR is to submit its revisions within thirty days.

Sincerely,

Joseph G. Murphy
Acting Commissioner of Insurance