

## 211 CMR: DIVISION OF INSURANCE

### 211 CMR 79.00: PRIVATE PASSENGER MOTOR VEHICLE INSURANCE RATES

#### Section

- 79.01: Purpose and Scope
- 79.02: Definitions
- 79.03: Competitive Market
- 79.04: Rate Standards
- 79.05: Rate Filings
- 79.06: Suspension or Disapproval of Voluntary Market Rate Filings and Rates
- 79.07: Statistical Plan
- 79.08: Activities of Insurers and Rating Organizations
- 79.09: Consumer Information and Disclosures
- 79.10: Initiation of a Hearing on a Rate Filing
- 79.11: Pre-hearing Procedures
- 79.12: Conduct of the Hearing
- 79.13: Decisions and Remedies
- 79.14: Use of Unauthorized Rates
- 79.15: False or Misleading Information
- 79.16: Examinations
- 79.17: Penalties
- 79.18: Severability

#### 79.01: Purpose and Scope

(1) 211 CMR 79.00 shall apply to Rates and Premium charges for all types of coverages under private passenger motor vehicle insurance policies, including, but not limited to, the form and content of Rate and Advisory Filings for the Voluntary Market in accordance with M.G.L. c. 175E and M.G.L. c. 175A; Residual Market Rate Filings in accordance with M.G.L. c. 175A; activities of Rating Organizations, and the conduct of hearings and related proceedings under M.G.L. c. 175A and M.G.L. c. 175E.

(2) The purposes of 211 CMR 79.00 are:

- (a) To promote the public welfare by regulating insurance rates so that they are not excessive, inadequate or unfairly discriminatory;
- (b) To promote the accuracy and fairness of private passenger motor vehicle insurance rates;
- (c) To promote price competition among Insurers so as to provide insurance rates that are responsive to Competitive Market conditions;
- (d) To prohibit price-fixing agreements and other anticompetitive behavior by Insurers;
- (e) To provide regulatory procedures for the maintenance of appropriate data reporting systems;
- (f) To authorize essential cooperative action among Insurers in the ratemaking process and to regulate such activity to prevent practices that tend to lessen competition substantially or to create a monopoly; and
- (g) To provide price and other information to consumers to enable them to purchase insurance suitable for their needs.

#### 79.02: Definitions

As used in 211 CMR 79.00, the following words and phrases shall mean:

Advisory Filing. A filing of Rates, Rating Factors or relativities, Classification Plans, or Rating Manuals, together with Supporting Information, prepared in accordance with 211 CMR 79.09 by a Rating Organization. An Advisory Filing shall not be deemed a Rate Filing under M.G.L. c. 175E, § 7 until a filer submits a Rate Filing to adopt an Advisory Filing, in whole or in part, as of a specified effective date.

CAR or Commonwealth Automobile Reinsurers. The operator of the plan established pursuant to M.G.L. c. 175, § 113H that serves as the Residual Market mechanism for motor vehicle insurance.

## 211 CMR: DIVISION OF INSURANCE

CAR ID Codes. The codes as defined in the Commissioner of Insurance's statistical plan for private passenger motor vehicle insurance required by M.G.L. c. 175A.

Classification. The process of grouping risks with similar risk characteristics so that differences in costs may be recognized.

Classification Plan. Any plan, definition or rule for the classification of risks including, without limitation, Classification by territory, driver or vehicle characteristics or use, and experience rating or Merit Rating plans.

Commissioner. The Commissioner of Insurance, appointed pursuant to M.G.L. c. 26, § 6, or his or her designee.

Competitive Market. A market where private passenger motor vehicle insurance rates are not fixed and established pursuant to M.G.L. c. 175, § 113B.

Division. The Division of Insurance created pursuant to M.G.L. c. 26, § 1.

Expenses. That portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses, commissions, residual market loads and fees.

Filer. The Insurer, Insurance Company Group or Rating Organization that files the Rate or Advisory Filing at issue.

Insurance Company Group. Two or more Insurers under the same ownership or control, as defined in M.G.L. c. 175, § 206.

Insurer. Any corporation, association, partnership, group or individual authorized to write private passenger motor vehicle insurance in Massachusetts.

Merit Rating. A rating procedure utilizing past motor vehicle accident and traffic violation experience of the operators insured under the policy to forecast future losses by measuring their loss experience against the loss experience of operators in the same Classification to produce a prospective premium credit, debit or unity modification.

Party. The Filer of a Rate Filing that is the subject of a hearing, or has a statutory right to request a hearing pursuant to M.G.L. c. 175E, § 7.

Premium. The final cost of a policy, or coverage within a policy, to an individual policyholder based on the particular drivers and motor vehicles insured under the policy.

Presiding Officer. The Commissioner or any person designated by the Commissioner to conduct hearings and related proceedings and to render findings, rulings and decisions.

Rate. The cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost with a factor to incorporate an individual Insurer's Expenses, profit, and variation in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum Premium.

Rate Filing. A filing of Rates, Rating Factors or relativities, Classification Plans, or Rating Manuals, together with Supporting Information, prepared by an Insurer, Insurance Company Group or Rating Organization and filed in accordance with M.G.L. c. 175E, § 7.

Rating Factor. A number that is greater than zero that is applied to a Rate to reflect the specific characteristics of the risk, including but not limited to, rating territory, driver or vehicle characteristics, Merit Rating plan, coverage level, and deductible option.

## 211 CMR: DIVISION OF INSURANCE

Rating Manual. Any manual of rules and rating procedures applicable to any insurance coverage subject to M.G.L. c. 175E. A Rating Manual shall not include final Rates for any Classification Plan or coverage, but may include rules for the calculation of Premiums from information outside the manual.

Rating Organization. A rating organization duly licensed under M.G.L. c. 175A, § 8.

Residual Market. The private passenger motor vehicles that are insured through policies issued pursuant to M.G.L. c. 175, § 113H and assigned to an Insurer through the Massachusetts Automobile Insurance Plan.

Residual Market Rate Filing. A filing of Rates, Rating Factors or relativities, Classification Plans, or Rating Manuals, together with Supporting Information prepared or submitted by or on behalf of CAR and filed in accordance with M.G.L. c. 175, § 113H(D).

Statistical Information. Loss and expense experience, including, but not limited to, data filed in accordance with statistical plans or reporting requirements approved or promulgated by the Commissioner and any compilation or display of such data. For purposes of M.G.L. c. 175E, § 6(a)(2), Statistical Information includes, but is not limited to, Premiums, exposures, loss pure premiums, development factors, average claim cost and frequency trend factors, claim adjustment expense factors, company and commission expense pure premiums, expense trend factors, and miscellaneous Rate level factors, including, but not limited to, increased limits, deductible and minor coverage factors, and territorial, class and model year/symbol relativities.

Supporting Information.

- (a) the experience and judgment of the Filer and the experience or data of other Insurers or others relied upon by the Filer;
- (b) the interpretation of any other data relied upon by the Filer;
- (c) descriptions of methods used in making the Rates; and
- (d) any other information relied on by the Filer in support of its Filing, as the Commissioner may require to be filed.

Trending. Any procedure for projecting losses to the average date of loss, or Premiums or exposures to the average date of writing, for the period during which the Rates are to be effective.

Under One-percent Company. An Insurer writing less than one percent of the private passenger motor vehicle insurance in Massachusetts, as determined by comparing the total written premium of each Insurer for private passenger motor vehicle insurance, as reported in the Insurer's most recent annual statement, with the total premiums written by all Insurers for private passenger motor vehicle insurance coverage.

Voluntary Market. The private passenger motor vehicles that are not insured through policies issued in the Residual Market.

### 79.03: Competitive Market

(1) Presumption. A Competitive Market is presumed to exist unless the Commissioner, after a hearing pursuant to M.G.L. c. 175E, § 5, determines that competition in the private passenger motor vehicle insurance market is, with respect to any territory or to any kind, subdivision or class of insurance, either:

- (a) insufficient to assure that Rates will not be excessive; or
- (b) so conducted as to be destructive of competition or detrimental to the solvency of Insurers, and the Commissioner issues findings of fact, conclusions and orders to that effect. Any such determination shall expire no later than one year after issuance.

(2) Standard. In determining whether competition, with respect to any territory or to any kind, subdivision or class of insurance, is either:

- (a) insufficient to assure that Rates will not be excessive; or
- (b) so conducted as to be destructive of competition or detrimental to the solvency of Insurers, the Commissioner shall consider relevant tests of workable competition pertaining to market structure, market

## 211 CMR: DIVISION OF INSURANCE

performance and market conduct and the practical opportunities available to consumers in the market to acquire pricing and other consumer information and to compare and obtain insurance from competing Insurers. Such tests may include, but are not limited to, the following: size and number of Insurers actively engaged in the market; market shares and changes in market shares of Insurers; ease of entry and exit from the market; underwriting restrictions; whether profitability for Insurers generally in the private passenger motor vehicle insurance market is unreasonably high; availability of consumer information concerning the product and sales outlets or other sales mechanisms; and efforts of Insurers to provide consumer information.

(3) Monitoring Competition. The Commissioner shall monitor the Competitive Market. The Commissioner shall utilize existing relevant information, analytical systems and other sources; cause or participate in the development of new relevant information, analytical systems and other sources; or rely on some combination thereof. Such activities may be conducted internally within the Division, in cooperation with other state insurance departments and/or the National Association of Insurance Commissioners, through outside contractors and/or in any other appropriate manner.

(4) Hearing. The Commissioner may at any time, with 21 days notice to the public, hold a hearing under M.G.L. c. 175E, § 5, to determine whether the Competitive Market is meeting the requisite statutory requirements under M.G.L. c. 175E, § 5.

### 79.04: Rate Standards

(1) The Commissioner shall disapprove any Rate Filing, or portion thereof, that results in a Rate that is excessive, inadequate or unfairly discriminatory.

(2) Excessive Rates. No Rate shall be held to be excessive unless such Rate is unreasonably high for the insurance provided. Evidence that a reasonable degree of competition exists in the area with respect to the Classification to which such Rate is applicable shall be considered as material, but not conclusive, evidence that such Rate is not excessive.

(3) Inadequate Rates. No Rate shall be held to be inadequate unless:

- (a) such Rate is unreasonably low for the insurance provided; and
- (b) the continued use of such Rate endangers the solvency of the Insurer using the same; or unless
- (b) such Rate is unreasonably low for the insurance provided and the use of such Rate by the Insurer using the same has, or if continued will have, the effect of destroying competition or creating a monopoly.

(4) Unfairly Discriminatory Rates. An unfairly discriminatory Rate exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and Expenses. Rates are not unfairly discriminatory if different Premiums result for policyholders with like loss exposures but different expense factors, or like expense factors but different loss exposures, as long as the Rates reflect the differences with reasonable accuracy. A Rate is not unfairly discriminatory if it is averaged broadly among persons insured under a group, franchise or blanket policy or a mass marketed plan.

(5) Rates and Classification Plans. An Insurer may utilize any sound actuarial method in determining Rates and Rate plans. Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside Massachusetts, to catastrophe hazards, to a reasonable rate of return on capital after provision for investment income, to past and prospective Expenses both country-wide and those specially applicable to Massachusetts, and to all other factors, including judgment factors, deemed relevant within and outside Massachusetts. Consideration also may be given in the making and use of Rates to dividends, savings or unabsorbed Premium deposits allowed or returned by Insurers to their policyholders, members or subscribers.

(6) Risks May Be Grouped by Classifications for the Establishment of Rates and Minimum Premiums. Rates may be modified to produce premiums for individual risks in accordance with rating plans that establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among

## 211 CMR: DIVISION OF INSURANCE

risks that can be demonstrated to have a probable effect upon losses or Expenses. No risk Classification, however, shall be based upon sex, marital status, race, creed, national origin, religion, gender identity, sexual orientation or age, except to produce the reduction in Rates for insureds age 65 years or older required by M.G.L. c. 175E, § 4.

(7) Merit Rating Plans. Rate Filings may include Merit Rating plans; provided, however, that such plans shall not utilize any motor vehicle at-fault accidents or traffic violations that pre-date the relevant policy effective date by more than six years, and the utilization of any particular motor vehicle at-fault accident or traffic violation shall not affect the Premium of a motor vehicle for more than five years. Rate Filings that include independent Merit Rating plans must also include accompanying rules in the Rating Manual.

(8) Territories. The Commissioner shall, from time to time as deemed necessary, publish a bulletin setting forth a designation of no fewer than 15 territories.

(9) Profits. Rates may contain a provision for contingencies and a reasonable profit. In determining the reasonableness of the profit, evaluation shall include consideration of all investment income attributable to the line of insurance.

(10) The Commissioner may disapprove, after a hearing, or suspend any Rate Filing, Classification Plan, rule or Rate, rating plan or modification of any of the foregoing if he or she finds that any of such elements fail to meet the requirements of the General Laws or are violative of public policy, and, therefore, subject to suspension and disapproval pursuant to M.G.L. c. 175E, § 8.

(11) Rating Factors Prohibited. Classification Plans, rules or Rates, rating plans or modification of any of the foregoing based in whole or in part on any of the following factors shall be deemed to violate public policy and are subject to disapproval pursuant to 211 CMR 79.04(10):

- (a) sex;
- (b) marital status;

## 211 CMR: DIVISION OF INSURANCE

- (c) race;
- (d) creed;
- (e) national origin;
- (f) religion;
- (g) age, except to produce the reduction in Rates for insureds age 65 years of age or older required by M.G.L. c. 175E, § 4;
- (h) occupation;
- (i) income;
- (j) education;
- (k) homeownership;
- (l) gender identity; and
- (m) sexual orientation.

(12) Underwriting Factors Prohibited. No Insurer or Insurance Company Group shall refuse to issue, renew or execute as surety a private passenger motor vehicle liability policy or bond, or any other insurance based on the ownership or operation of a motor vehicle because of any of the following factors, or otherwise use such factors to determine placement in a particular affiliate within an Insurance Company Group:

- (a) sex;
- (b) marital status;
- (c) race;
- (d) creed;
- (e) national origin;
- (f) religion;
- (g) age;
- (h) occupation;
- (i) income;
- (j) principal place of garaging of the vehicle;
- (k) education;
- (l) homeownership;
- (m) gender identity; and
- (n) sexual orientation.

(13) No credit information contained on a consumer report obtained from a consumer reporting agency pursuant to M.G.L. c. 93, § 50 shall be used in private passenger motor vehicle insurance:

- (a) rating, including its use in any Classification Plans, rules or Rates, rating plans or modification of any of the foregoing; or
- (b) underwriting, including its use to determine whether to issue, renew or execute as surety a private passenger motor vehicle liability policy or bond, or any other insurance based on the ownership or operation of a motor vehicle, or to determine the placement in a particular affiliate within an Insurance Company Group.

Nothing in 211 CMR 79.05(13) shall be construed to restrict any Insurer from obtaining or using information contained in an insurance claims history report, a motor vehicle or driver history report, or any other report from the Massachusetts Registry of Motor Vehicles or its out-of-state equivalent.

### 79.05: Rate Filings

(1) Time for Rate Filings.

- (a) Voluntary Market Rate Filings. Rate Filings for Rates to be used in the Voluntary Market shall be filed in paper and in electronic form with the Commissioner not less than 45 days prior to the proposed effective date. In addition, when a Rate Filing involving a rate adjustment depends upon a change in the relationship between the proposed Rates and the anticipated production expense portion thereof from the relationship anticipated under any Rates previously filed and currently in effect for the Insurer or Rating Organization involved, the Insurer or Rating Organization making such a Rate Filing shall simultaneously give written notice of such filing to every licensed producer of every Insurer on whose behalf such filing is made.
- (b) Residual Market Rate Filings. The Rate Filings for Rates to be used in the Residual Market shall be filed

## 211 CMR: DIVISION OF INSURANCE

in paper and electronic form with the Commissioner not less than 15 days prior to the proposed effective date.

(2) Time for Advisory Filings. A Rating Organization may make an Advisory Filing at any time. Such Filings shall be submitted in paper and electronic form.

(3) Filings. One paper copy of any Rate Filing or Advisory Filing made pursuant to 211 CMR 79.05(1) or (2) shall be submitted to the Division; provided, however, that the Division may request additional paper copies that shall be supplied by the Filer at the Filer's expense. The Filer shall submit simultaneously one copy of the Rate Filing or Advisory Filing to the Attorney General, unless the Commissioner directs otherwise. Electronic filings made pursuant to 211 CMR 79.05(1) and (2) shall be in a form satisfactory to the Commissioner.

(4) Content. Rate Filings and Advisory Filings, and Supporting Information as applicable, shall utilize the forms and checklists approved by the Commissioner. Every Rate Filing shall state the proposed effective date of the Rate and shall indicate the scope and extent of the coverage contemplated. The filing shall contain, or incorporate by reference if previously filed with the Division, the following information and its data source in the following order:

- (a) Summary of Rate level changes and other matters;
- (b) Rate level calculations for each coverage;
- (c) Premiums and exposures;
- (d) Adjustments to Premiums and exposures;
- (e) Accident year reported and paid losses and claims;
- (f) Development factors;
- (g) Claim cost trends;
- (h) Frequency trends;
- (i) Other adjustments to losses;
- (j) Claim adjustment expenses;
- (k) Commission expenses;
- (l) Other expenses;
- (m) Expense trends;
- (n) Underwriting profit, including due consideration of investment income;
- (o) Classification Plans;
- (p) Territorial and operator rate class relativities;
- (q) Increased limits factors;
- (r) Deductible and miscellaneous Rating Factors;
- (s) Credibility;
- (t) Final base Rates and Rating Factors; and
- (u) Any other Supporting Information.

(5) Copy Available for Inspection. A copy of each Rate Filing or Advisory Filing shall be available for public inspection during normal business hours at the Division.

(6) Requests for Copies of Rate Manuals. Every Insurer, Rating Organization filing for an Insurer, or CAR shall make available to the public copies of its Rate Manual at a cost not to exceed 30% above the actual cost of printing said manual.

(7) Review Period.

(a) Voluntary Market Rate Filings. As provided in M.G.L. c. 175E, § 7, the Commissioner shall have not less than 45 days to review each Voluntary Market Rate Filing before it becomes effective. If a hearing on the Rate Filing is initiated prior to the effective date, this period may be extended by the Commissioner for an additional period not to exceed 45 days in order to complete the hearing and make a decision thereon. If the Commissioner suspends the proposed effective date of any such Filing, the Commissioner shall, by the close of the period of suspension, either approve the filing or issue an order disapproving the filing and specifying the grounds for disapproval.

(b) Residual Market Rate Filings. As provided in M.G.L. c. 175A, § 6, the Commissioner shall have not less than 15 days to review each Residual Market Rate Filing before it becomes effective; provided, however, the Commissioner may by order suspend the effective date for not more than 30 additional days in any case where

## 211 CMR: DIVISION OF INSURANCE

the Commissioner determines that delay is necessary to properly examine the Filing and Supporting Information or supplemental information, or to permit a hearing thereon. If the Commissioner suspends the proposed effective date of any such Filing, the Commissioner shall, by the close of the period of suspension, either approve the filing or issue an order disapproving the filing and specifying the grounds for disapproval.

(c) Incomplete or Inadequate Filings. When a Rate Filing is incomplete or requires additional information for the Division to review the filing, the Division may return the Rate Filing to the Filer with questions or comments regarding the missing or incomplete information. The Commissioner may toll the proposed effective date of any Rate Filing that is materially incomplete or inadequate until such time that the Rate Filing complies with 211 CMR 79.05 upon notice to the Filer. Where this occurs, the new effective date shall be calculated by extending the initial proposed effective date by the number of days in the toll period, unless the Filer provides a later date. Until any missing or requested information is provided, the Rate Filing neither shall be deemed complete nor filed, nor available for use by the Insurer. If the requested information is not provided within a reasonable time period, the Rate Filing may be returned as not filed and not available for use.

### 79.06: Suspension or Disapproval of Voluntary Market Rate Filings and Rates

- (1) Suspension of a Rate Filing. The Commissioner may suspend the operation of any Rate Filing pursuant to M.G.L. c. 175E, § 7 for not more than 45 days after its effective date. The Commissioner either shall approve such filing or issue an order disapproving it and specifying the grounds for the disapproval within such 45-day period.
- (2) Implementation of Suspended Rate Filing. An Insurer may implement a suspended Rate Filing that has not been disapproved by the Commissioner on the suspended filing's effective date provided:
  - (a) The Insurer submits a written agreement to the Commissioner stating that it will adjust the Premiums, including interest at the rate of eight per cent per annum, of all of its policies that are affected by the filing from the respective effective dates in accordance with the Commissioner's final determination regarding the suspended Rate Filing; and
  - (b) The Insurer posts sufficient bond with the Commissioner in a form and amount deemed satisfactory to the Commissioner. The Division's approval of the form and the amount of such bond shall be in writing.
- (3) Suspension of a Rate.
  - (a) The Commissioner may order the suspension, prospectively, of a Rate used by an Insurer and re-impose the Rate in effect for that Insurer immediately prior to the suspended Rate. In such event, the Commissioner shall hold a hearing within 15 days after such order, unless the Insurer waives its right to a hearing.
  - (b) The Commissioner shall make a determination as to whether to re-impose or disapprove the suspended Rate within 15 days after the close of the hearing. If the Commissioner disapproves a suspended Rate, the disapproval shall take effect not less than 15 days after the issuance of the order, and the Rate in effect immediately prior to the suspended Rate will remain in effect for a period no longer than six months.
  - (c) If the Insurer submits a new Rate Filing during this six-month period and the new filing is approved by the Commissioner, such Rate will go into effect.
  - (d) If the Insurer fails to submit a new Rate Filing during, or at the expiration, of this six-month period, no Rate will be in effect and the Insurer will be prohibited from issuing new or renewal policies in the private passenger motor vehicle insurance market until the Insurer submits a Rate Filing in accordance with 211 CMR 79.05 that is approved by the Commissioner.
- (4) Disapproval of a Rate.
  - (a) If the Commissioner determines after a hearing conducted pursuant to 211 CMR 79.12 that any Classification Plan, rule or Rates, rating plan or modification of any of the foregoing fail to comply with the relevant provisions of M.G.L. c. 175A, M.G.L. c. 175E or 211 CMR 79.00, or violates public policy, the Commissioner shall order the disapproval of such Classification Plan, rule, Rate, Rating plan or modification, and with respect to any such disapproved Rate, the order may include a provision for a Premium adjustment.
  - (b) If the Commissioner disapproves such Rate, the disapproval shall take effect not less than 15 days after the issuance of the order and the Rate in effect immediately prior to the disapproved Rate will remain in effect for the Insurer for a period no longer than six months.
  - (c) If the Insurer submits a new Rate Filing during this six-month period that the Commissioner approves, such Rate will go into effect.

## 211 CMR: DIVISION OF INSURANCE

(d) If the Insurer fails to submit a new Rate Filing during, or at the expiration of this six-month period, no Rate will be in effect and the Insurer will be prohibited from issuing new or renewal policies in the private passenger motor vehicle insurance market until the Insurer submits a Rate Filing in accordance with 211 CMR 79.05 that is approved by the Commissioner.

### 79.07: Statistical Plan

Nothing in 211 CMR 79.00 shall affect the obligations of each Insurer or Insurance Company Group to provide the data required by any statistical plans promulgated by the Commissioner for annual reporting of motor vehicle insurance experience.

### 79.08: Activities of Insurers and Rating Organizations

#### (1) Prohibited Activity by Insurers and Rating Organizations.

(a) No Insurer or Rating Organization shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, in any territory, the business of private passenger motor vehicle insurance or any kind, subdivision or class thereof.

(b) No Insurer or Rating Organization shall agree with any other Insurer or Rating Organization to charge or adhere to any Rate, prospective loss cost, rating plan, rating schedule, rating rule, policy or bond form, rate Classification Plan, rate territory, underwriting rule, survey, inspection or similar material, except as needed to exchange Statistical Information as authorized by the Commissioner. In addition, a Rating Organization may establish advisory manuals of Classification Plans, rules and Rates, rating plans or modifications of any of the foregoing in any manner not prohibited by the Commissioner.

(c) No Insurer or Rating Organization shall make any agreement with any other Insurer, Rating Organization or other person that:

1. Restrains trade; or

2. Substantially lessens competition in any territory or in any kind, subdivision or class of insurance.

(d) No Insurer may acquire or retain any capital stock or assets of, or have any common management with, any other Insurer or Insurers, if the effect of such acquisition, retention or common management may be to substantially lessen competition in any territory or in any kind, subdivision or class of insurance.

(e) No Insurer or Rating Organization shall make any agreement with any other Insurer or Rating Organization to refuse to deal with any person in connection with the sale of insurance.

(f) No Rating Organization or member or subscriber thereof shall interfere with the right of any Insurer to make its Rates independently of such Rating Organization or to charge Rates different from the Rates filed by such Rating Organization.

(g) No member of or subscriber to a Rating Organization shall refuse to do business with, or prohibit or prevent the payment of commission to any licensed insurance producer on the ground that such insurance producer does business with an Insurer which files its Rates, or any portion thereof, independently of such Rating Organizations.

(h) Nothing in 211 CMR 79.00 shall be construed as requiring any Insurer to become a member of or a subscriber to any Rating Organization, or as preventing any Insurer, while a member of or subscriber to a Rating Organization, from making its own Rates for any kind, subdivision or class of insurance, for which it does not elect to authorize the Rating Organization to act on its behalf.

(i) Any Insurer which is a member of or subscriber to a Rating Organization may make its own Rates for any kind, subdivision or class of insurance. No Rating Organization shall have authority to act on behalf of any Insurer which is a member of or subscriber to such Rating Organization except as authorized in writing by such member or subscriber, which authority may be supplemented, modified or revoked, in whole or in part, at any time by such member or subscriber at its option.

(j) No Rating Organization shall have or adopt any rule or execute any agreement, or formulate or engage in any program, the effect of which would be to require any member, subscriber or other Insurer to utilize some or all of its services, or to adhere to its Rates, rating plans, rating systems, underwriting rules, or policy forms, or to prevent any Insurer from acting independently.

(k) Notwithstanding 211 CMR 79.08(6)(a), in a Competitive Market no Rating Organization shall prepare or file an Advisory Filing for any motor vehicle coverage subject to M.G.L. c. 175E, that includes a coverage level

## 211 CMR: DIVISION OF INSURANCE

rate that is based on the total loss experience of all companies.

(2) Penalties and Actions. The Commissioner shall disapprove any Rate or Advisory Filing that does not comply with M.G.L. c. 175E, § 6 or 211 CMR 79.08(1), and shall seek appropriate injunctive relief and penalties in order to enforce strictly the provisions of M.G.L. c. 175E, § 6 and 211 CMR 79.08.

(3) Affiliated Insurers. The provisions of 211 CMR 79.08(1) shall not be construed to prohibit two or more Insurers in an Insurance Company Group, from having the right to exchange Statistical Information.

(4) The fact that two or more Insurers, whether or not members or subscribers of a Rating Organization, use, either consistently or intermittently, the manuals of Classification Plans, rules and Rates, rating plans, modifications of any of the foregoing or recommendations of such organizations, shall not be sufficient in itself to support a finding that an agreement to adhere exists, and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement.

(5) Notwithstanding M.G.L. c. 175A; M.G.L. c. 175E, § 6 and any other provision of 211 CMR 79.08, a Rating Organization, with the participation of its members, may:

- (a) Develop and make recommendations to the Commissioner with respect to statistical plans.
- (b) Collect, compile and distribute Statistical Information to its members and subscribers, provided such information shall be supplied upon request to the Division and may be supplied, upon payment of a reasonable charge therefore, to any Insurer or other person, whether or not a member or subscriber of the Rating Organization.
- (c) Prepare, distribute and file Rating Manuals on behalf of any member or subscriber that authorizes it to make such a filing in accordance with M.G.L. c. 175E, § 6(a)(10).
- (d) Prepare, distribute and file policy forms and endorsements on behalf of any member or subscriber that authorizes it to make such a filing in accordance with M.G.L. c. 175E, § 6(a)(10).
- (e) Conduct and publish studies of general actuarial and rate making issues, provided such studies shall be supplied, upon request, to the Division and, upon payment of a reasonable charge therefore, to any Insurer or other person, whether or not a member or subscriber of the Rating Organization.
- (f) Perform any other actions in connection with motor vehicle insurance Rates which are not inconsistent with M.G.L. c. 175E.

(6) Notwithstanding M.G.L. c. 175A; M.G.L. c. 175E, § 6 and any other provision of 211 CMR 79.08, a Rating Organization, without the participation of its members, may:

- (a) Prepare and file an Advisory Filing for any motor vehicle coverage subject to M.G.L. c. 175E, based exclusively on the collective loss and exposure experience of the Under One-percent Companies for the purpose of establishing average coverage level rates; provided, however, that such an Advisory Filing may include the experience of all companies for the purpose of establishing rate relativities and factors supporting the Classification Plan.
- (b) Prepare and file a Rate Filing on behalf of CAR if CAR authorizes it to make such a filing.
- (c) Prepare and file a Rate Filing on behalf of an Under One-percent Company, as determined under M.G.L. c. 175E, § 4(e) and 211 CMR 79.00, and which authorizes it to make such a filing in accordance with M.G.L. c. 175E, § 6(a)(10).
- (d) If an Under One-percent Company has Expenses, including commissions, prior to trending, which are 80% or less than those underlying the Advisory Filing made by a Rating Organization on behalf of such Companies or the Rate Filing of another Insurer which is adopted by such Insurer, the Under One-percent Company shall not adopt that external Advisory Filing without deviating therefrom so as to reflect its lower Expenses, unless specific and substantial reasons for not so deviating have been provided to and approved by the Commissioner.

### 79.09: Consumer Information and Disclosures

(1) The Commissioner may establish rules annually by which Insurers shall produce an information guide which outlines in language prescribed or approved by the Commissioner the various choices of private passenger motor vehicle insurance coverage available to insureds and an estimate of differences in cost among various coverages and

## 211 CMR: DIVISION OF INSURANCE

Insurers. Each Insurer or Insurance Company Group shall bear full responsibility for assuring that the information contained in the guide is accurate and that a copy of the guide is forwarded to every person insured or solicited for insurance by that company or its insurance producers.

(2) Insurers and insurance producers shall disclose in simple language to every person they insure or solicit for insurance that person's private passenger motor vehicle insurance coverage options, including the option to exclude oneself and members of one's household from personal injury protection coverage, as defined by M.G.L. c. 90, § 34A. The Commissioner shall prescribe the form, content, and timing of said disclosures.

(3) Insurers or Insurance Company Groups that host Internet websites shall make available on the websites information setting forth private passenger motor vehicle insurance coverage and price options for private passenger motor vehicle insurance in Massachusetts, or else conspicuously set forth a telephone number(s) at which a consumer may obtain this information.

### 79.10: Initiation of a Hearing on a Rate Filing

(1) Adjudicatory Proceeding. A hearing on a Rate Filing is an adjudicatory proceeding.

(2) Initiation by the Commissioner. The Commissioner unilaterally may initiate a hearing on a Rate Filing prior to its effective date after at least ten days' notice.

(3) Motion by the Attorney General. The Commissioner shall initiate a hearing on a Rate Filing under M.G.L. c. 175E, § 7 if the Commissioner receives a written motion to do so from the Attorney General dated no later than 20 days after the submission of the Rate Filing. The Attorney General must serve simultaneously a copy of such motion on the Filer.

(4) Motion by Insurance Producer. The Commissioner shall call a hearing on a Rate Filing under M.G.L. c. 175E, § 7 if the Commissioner receives a written motion to do so from any insurance producer of any Insurer to which such Rate Filing is applicable or from any association representing insurance producers no later than ten days after the submission of the Rate Filing, provided:

- (a) the Rate Filing proposes a change in the relationship between the proposed Rates and the commission expense provisions in the Rates from the relationship in the rates previously in effect for the Insurer or Insurance Company Group involved; and
- (b) the Commissioner determines that any such request is in good faith and is supported by reasonable grounds; and
- (c) The producer serves a copy of such motion simultaneously on the Filer.

(5) Form of Request. Concurrent with a motion requesting a hearing pursuant to 211 CMR 79.10, the moving Party shall submit to the Commissioner and to the Filer, a detailed statement of issues specifying each aspect of the Rate Filing on which a hearing is sought and the reasons why the Rate Filing is alleged to violate M.G.L. c. 175E; M.G.L. c. 175A; or 211 CMR 79.00. The statement also shall identify and provide contact information, including a mailing address, telephone and fax numbers and e-mail address for the person appearing on behalf of the moving Party. If the moving Party will be represented by counsel, the statement shall include a notice of appointment of counsel that provides the above information.

(6) Notice of Hearing. Not less than ten days prior to the date scheduled for a hearing, the Commissioner shall notice a hearing by publishing such notice in at least one newspaper of general circulation printed in Massachusetts. The Filer shall pay the costs associated with such publication. Concurrently, the Commissioner shall cause notice of the hearing to be given to the Filer and to the producer or the Attorney General who requested the hearing. Each notice shall contain:

- (a) the date, time and location of the hearing;
- (b) the subjects and issues involved in the hearing;
- (c) a statement as to whether the operation of the Rate Filing has been suspended in accordance with 211 CMR 79.10; and
- (d) any other necessary miscellaneous information.

## 211 CMR: DIVISION OF INSURANCE

(7) Consolidation of Rate Hearings. If the Commissioner determines that hearings have been initiated on two or more Rate Filings that are similar in scope or raise similar issues, the Commissioner may consolidate such hearings for purposes of considering such issues.

(8) Initiation of Hearing. The initiation of a hearing occurs when the docket is opened for such matter.

### 79.11: Pre-hearing Procedures

Submission of Lists of Witnesses and Documents. No less than seven days prior to the scheduled date of a hearing, each Party shall submit to the Presiding Officer and serve on the other Parties a list of witnesses which it intends to call to testify. This list shall include the occupation and qualifications of each witness, a statement of the subject matter and a summary of the witness's expected testimony, and an estimate of the time required for such testimony. Each Party also shall submit a list of documents it intends to introduce at the hearing. A Party who objects to any witness or document must submit the objections in writing within three business days after receiving such information from the other Party. The Presiding Officer may, in his or her discretion, require additional submissions from the Parties prior to the hearing.

### 79.12: Conduct of the Hearing

(1) Ex Parte Communications. From the initiation of a hearing subject to 211 CMR 79.00 until the rendering of a final decision, no person who is not employed by the Division shall communicate *ex parte* with the Commissioner or Presiding Officers with respect to the substance of that proceeding; provided that a request for a report concerning the status of a proceeding or an inquiry as to the Division's practice or procedure shall not be prohibited. If the Commissioner or Presiding Officer determines that a Party or his agent has violated 211 CMR 79.12(1), he or she may exclude the Party from the hearing or decide against the Party with prejudice. If the Presiding Officer determines that a person not a Party has violated 211 CMR 79.12(1), he or she may exclude that person from the hearing.

(2) Motions. The Presiding Officer may make rulings regarding the admissibility of evidence or any other matter which may arise during a hearing. Any Party making application to the Presiding Officer for a ruling on any issue other than the admissibility of evidence shall do so by motion which shall state the ruling sought and the grounds therefor. The Presiding Officer may require that a motion be presented in writing. The Presiding Officer may, in his or her discretion, hear oral argument on a motion prior to making a decision thereon.

(3) Objections to Rulings. At the time that the Presiding Officer makes a ruling, any Party shall make known any objection to the ruling and his grounds, provided that if a Party has no opportunity to object to a ruling at the time it is made, such Party may, within three days of receipt of the ruling, state in writing any objection and the grounds.

(4) Official Notice. The Presiding Officer may take official notice of any fact which may be judicially noticed by the courts of Massachusetts, and in addition, may take official notice of general, technical or scientific facts within the Presiding Officers specialized knowledge or information contained in documents filed with the Division; provided that the Presiding Officer shall notify all Parties of the material so noticed, and provided further that any Party, upon timely request, shall be afforded an opportunity to contest the facts so noticed.

(5) Evidence. The Presiding Officer need not observe the rules of evidence observed by the courts of the United States or of Massachusetts, but shall observe the rules of privilege recognized by Massachusetts law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The Presiding Officer may exclude testimony or evidence which is determined to be unduly repetitious or to have an unreasonably dilatory effect upon the hearing process. All evidence, including any documents in the possession of the Division of which the Presiding Officer desires to rely on in making a decision, shall be offered and made a part of the record in the hearing.

(6) Cross-examination and Rebuttal Evidence. A Party shall have the right to call and examine witnesses, to cross-examine witnesses, and to submit affirmative and rebuttal evidence.

## 211 CMR: DIVISION OF INSURANCE

- (7) Offers of Proof. Any offer of proof made in conjunction with an objection to a ruling by the Presiding Officer rejecting or excluding evidence shall consist of a statement of the substance of the evidence which the Party making such offer contends would be adduced by the testimony, and if the rejected or excluded evidence consists of documents or of references to documents, a copy of such documents shall be marked for identification and shall constitute the offer of proof.
- (8) Oral Argument. The Presiding Officer may, either on the officer's own motion or on the motion of any Party, allow and designate time for the presentation of opening and closing arguments.
- (9) Transcripts. All proceedings in a hearing shall be officially recorded and transcribed by a reporter approved by the Division. The Filer shall pay the cost of the reporter's fees, together with the cost of providing the Division with a copy of the transcript. Other entities may obtain copies of the transcript from the reporter at cost.
- (10) Briefs. At the Presiding Officer's discretion, a Party may submit a brief within such time as the Presiding Officer shall specify. A Party which desires additional time in which to file a brief may request an extension by written motion within the period specified. Each Party who files a brief shall submit two copies to the Division, except where a different number is permitted or directed by the Presiding Officer, and shall serve one copy on all other Parties.
- (11) Burden of Proof. In any hearing conducted under M.G.L. c. 175E, the burden shall be on the Filer to justify that the Rate Filing complies with M.G.L. c. 175E; M.G.L. c. 175A and 211 CMR 79.00.

### 79.13: Decisions and Remedies

- (1) The decision of the Commissioner or Presiding Officer shall be in writing. It shall be accompanied by a statement of reasons, including determinations of each issue of fact or law necessary to the decision. The Presiding Officer shall notify all Parties of the decision, of their right to appeal the decision, and of the time within which such right may be enforced.
- (2) If, after a bad faith hearing conducted under M.G.L. c. 175E, § 9, the Commissioner finds that the Filer has failed to justify its Rate Filing, the Commissioner may order that all policies written under such bad-faith Rate Filing be rewritten at Rates meeting the requirements of 211 CMR 79.00 from the date of inception of such policies, or that all such policies be cancelled on a *pro rata* basis.

### 79.14: Use of Unauthorized Rates

No Insurer or Insurance Company Group shall make or issue a contract or policy for private passenger motor vehicle insurance in the Voluntary or Residual Market except in accordance with Rate Filings made by or on behalf of the Insurer or Insurance Company Group as provided in the relevant provisions of M.G.L. c. 175A; M.G.L. c. 175E; and 211 CMR 79.00. Violation of 211 CMR 79.14 and 211 CMR 79.06(3)(d) and (4)(d) shall be subject to the penalties provided in M.G.L. c. 175E, § 12.

### 79.15: False or Misleading Information

No person or organization shall willfully withhold information from, or knowingly give false or misleading information to the Commissioner, any statistical agent, any Rating Organization or any Insurer that will affect the Rates or Premiums charged under M.G.L. c. 175A or M.G.L. c. 175E. Violation of 211 CMR 79.15 shall be subject to the penalties provided in M.G.L. c. 175E, § 12.

### 79.16: Examinations

- (1) Insurers and Insurance Company Groups. Pursuant to M.G.L. c. 175, § 4 and M.G.L. c. 175E, § 8, the Commissioner may examine any Insurer to ascertain whether its rating and underwriting practices comply with the

## 211 CMR: DIVISION OF INSURANCE

law. Final reports on examinations shall be available for public inspection.

(2) Rating Organizations. Pursuant to M.G.L. c. 175A, § 14 and M.G.L. c. 175E, § 8, the Commissioner may examine any Rating Organization to ascertain whether its rating and underwriting practices comply with the law. Final reports on examinations shall be available for public inspection.

(3) CAR. Pursuant to M.G.L. c. 175, § 4, the Commissioner may examine CAR to ascertain whether its rating practices comply with the law. Final reports on examinations shall be available for public inspection.

### 79.17: Penalties

In addition to the penalties set forth in M.G.L. c. 175A, § 18 and M.G.L. c. 175E, § 12, the Commissioner may suspend the certificate of authority or license of any Insurer or Rating Organization which fails to comply with an order of the Commissioner under M.G.L. c. 175A; M.G.L. c. 175E; or 211 CMR 79.00 within the time limited by such order, or any extension thereof which the Commissioner may grant. The Commissioner shall not suspend the certificate of authority or license of any Insurer or Rating Organization for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until such order has been affirmed. The Commissioner may determine when a suspension of certificate of authority or license shall become effective and it shall remain in effect for the period fixed by the Commissioner, unless the Commissioner modifies or rescinds such suspension or until the order upon which such suspension is based is modified, rescinded or reversed. No certificate of authority or license shall be suspended or revoked except upon a written order of the Commissioner, stating the findings, made after a hearing held upon not less than ten days written notice to such organization specifying the alleged violation.

### 79.18: Severability

The provisions of 211 CMR 79.00 are severable. If any section, subsection, division, subdivision, paragraph, sentence or clause of 211 CMR 79.00 is held invalid or unconstitutional, such decision shall not affect the remaining portions of 211 CMR 79.00.

## REGULATORY AUTHORITY

211 CMR 79.00: M.G.L. c. 175A, § 15 and c. 175E, § 10.