

211 CMR: DIVISION OF INSURANCE

211 CMR 91.00: MOTOR VEHICLE INSURANCE RATES

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91.01: Authority

211 CMR 91.00 is promulgated in accordance with the authority granted to the Commissioner of Insurance by M.G.L. c. 175A, § 15 and M.G.L. c. 175E, § 10.

91.02: Definitions

As used in 211 CMR 91.00:

- (1) Advisory Filing means a filing of rates, rating factors or relativities, Classification Plans, or Rating Manuals, together with supporting information, including a filing prepared by a Rating Organization pursuant to M.G.L. c. 175E, § 6(a)(2). An Advisory Filing shall be deemed not to constitute a Rate Filing under M.G.L. c. 175E, § 7.
- (2) Classification Plan means 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.
- (3) Commissioner means the Commissioner of Insurance, appointed pursuant to M.G.L. c. 26, § 6.
- (4) Division means the Division of Insurance within the Department of Banking and Insurance.
- (5) External Loss, Expense and Other Factors mean loss, expense and other factors from any source other than the experience of the Insurer or Insurance Company Group for which a Rate Filing is made.
- (6) Insurance Company Group means two or more Insurers which share common management or operations.
- (7) Insurer means any corporation, association, partnership, group or individual authorized to write Motor Vehicle Insurance in the Commonwealth.
- (8) Motor Vehicle Insurance means insurance provided in motor vehicle policies or bonds, as defined in M.G.L. c. 90, §§ 34A and 340, or in M.G.L. c. 175, §§ 113A, 113C, 113L and 113O, or any other coverage offered in connection therewith, other than private passenger coverages.

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- (9) Oral Statement means a statement of position made during a hearing, with the permission of the Presiding Officer, by any person who is not a Party.
- (10) Party means any person, agency or organization which has been granted permission or exercised a statutory right to appear and present testimony at a hearing.
- (11) Presiding Officer means any person designated by the Commissioner to conduct hearings and related proceedings and to render findings, rules and decisions. If, at any stage of the proceedings, a Presiding Officer has not been designated, the Commissioner shall be the Presiding Officer.
- (12) Rate Filing means 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.
- (13) Rating Manual means 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 or coverage, but may include rules for the calculation of rates from information outside the manual.
- (14) Rating Organization means a rating organization duly licensed under M.G.L. c. 175A.
- (15) Statistical Information means 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 age/symbol relativities.
- (16) Statutory Intervenor means any person, agency or organization which has a statutory right to appear as a Party in any hearing conducted pursuant to 211 CMR 91.00.

91.03: Purpose and Scope

211 CMR 91.00 shall govern the activities of Rating Organizations, the form and content of Rate Filings and Advisory Filings, and the conduct of hearings and related proceedings under M.G.L. c. 175E. 211 CMR 91.00 supersedes the prescription of forms for rate filings, codified as 211 CMR 76.00, and the procedures concerning rate filings and the conduct of hearings for motor vehicle insurance, other than private passenger coverages, under M.G.L. c. 175E, codified as 211 CMR 78.00.

91.04: Activities of Rating Organizations Regulated

Any Rating Organization may, with the participation of its members:

- (1) Develop and make recommendations to the Commissioner of Insurance with respect to statistical plans.
- (2) Collect, compile and distribute Statistical Information to its members and subscribers, provided such information shall be supplied upon request to the Division of Insurance and, upon payment of a reasonable charge therefor, to any Insurer or other person, whether or not a member or subscriber of the Rating Organization.

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- (3) Prepare, distribute and file Rating Manuals on behalf of any member or subscriber which authorizes it to make such a filing in accordance with M.G.L. c. 175E, § 6(a)(10).
- (4) Prepare, distribute and file policy forms and endorsements on behalf of any member or subscriber which authorizes it to make such a filing in accordance with M.G.L. c. 175E, § 6(a)(10).
- (5) Conduct and publish studies of general actuarial and rate making issues, provided such studies shall be supplied, upon request, to the Division of Insurance and, upon payment of reasonable charge therefor, to any insurer or other person, whether or not a member or subscriber of the Rating Organization.
- (6) Perform any other actions in connection with motor vehicle insurance rates which are not inconsistent with M.G.L. c. 175E.

Any Rating Organization may, without the participation of its members:

- (1) Prepare and file an Advisory Filing for any motor vehicle coverage subject to M.G.L. c. 175E.
- (2) Prepare and file a Rate Filing on behalf of any member or subscriber which authorizes it to make such a filing in accordance with M.G.L. c. 175E, § 6(a)(10), for any motor vehicle coverage subject to M.G.L. c. 175E, other than "trucks, trailers and tractors" and "private passenger type" commercial coverages, and taxi, garage/dealer and motorcycle coverages.
- (3) Prepare and file a Rate Filing on behalf of the Massachusetts Motor Vehicle Reinsurance Facility or any residual market organization which is authorized or directed by law to file rates for any motor vehicle insurance coverage subject to M.G.L. c. 175E and which authorizes it to make such a filing.
- (4) Prepare and file a Rate Filing on behalf of any Insurer or Insurance Company Group which wrote less than 1% of the premiums for motor vehicle insurance in the commonwealth, as determined under M.G.L. c. 175E, § 4(e) and 211 CMR 91.00, and which authorizes it to make such a filing in accordance with M.G.L. c. 175E, § 6(a)(10).
- (5) If an Insurer, writing less than 1% of the premiums for motor vehicle insurance in the Commonwealth, as determined under M.G.L. c. 175E, § 4(e), and 211 CMR 91.00, has expenses, including commissions, prior to trending, which are 80% or less than those underlying the rate filing made by a Rating Organization on behalf of such Insurer or the rate filing of another Insurer which is adopted by such Insurer, that Insurer shall not adopt the external rate 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.

91.05: Statistical Plan

Nothing in 211 CMR 91.00 shall affect the obligations of each Insurer or Insurance Company Group to comply with any statistical plans promulgated by the Commissioner for annual reporting of Motor Vehicle Insurance experience.

91.06: Filings

- (1) Time for Rate Filings. Any Rate Filing shall be submitted to the Commissioner not less than 45 days prior to its proposed effective date. Three copies of any Rate Filing shall be submitted to the Commissioner and one copy to the Attorney General, unless the Commissioner directs otherwise.

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(2) Time for Advisory Filings. Advisory Filings may be filed at any time, but must be filed no less than ten days before any hearing at which they may be considered. Three copies of any Advisory Filing shall be submitted to the Commissioner and one copy to the Attorney General, unless the Commissioner directs otherwise.

(3) Supporting Information. The Commissioner may require any Insurer, Insurance Company Group or Rating Organization to furnish the information upon which it supports its Rate Filing.

(4) Form. Rate Filings and Advisory Filings, and supporting information as applicable, shall be presented in the following order:

- (a) Summary of rate level changes
- (b) Rate level calculations for each coverage
- (c) Premiums and exposures
- (d) Adjustments to Premiums and Exposures
- (e) Reported losses
- (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, Classification and Rating relativities
- (q) Increased limits factors
- (r) Deductible and miscellaneous rating factors
- (s) Data sources
- (t) Credibility
- (u) Miscellaneous

(5) Use of External Experience. Rate Filings may use any reasonable credibility method to support the use of rates developed, in whole or in part, on the basis of External Loss, Expense or Other Factors. Every Insurer which writes 1% or more of the premiums for Motor Vehicle Insurance in the Commonwealth in the preceding year must submit with its Rate Filing its own loss and expense experience to support the reasonableness of its use of External Loss, Expense or Other Factors. The determination of which insurers write less than 1% of the premiums for Motor Vehicle Insurance in the commonwealth, under M.G.L. c. 175E, § 4(e) and for the purposes of 211 CMR 91.00, shall be made by comparing the written premium of each Insurer, for private passenger and commercial coverages separately, as reported in the Insurer's most recent annual statement, with the total premiums written by all Insurers for such coverages.

(6) Copy Available for Inspection. A copy of each Rate Filing or Advisory Filing shall be available for inspection during normal business hours at the office of the Division for at least 90 days after its submission.

(7) Rejection of Rate Filings. The Commissioner may reject any Rate Filing if he determines that the filing party has not complied with 211 CMR 91.00. Any Rate Filing which has been rejected pursuant to 211 CMR 91.06(7) may be resubmitted with appropriate modifications. Any Rate Filing resubmitted with appropriate modifications following disapproval may be made effective immediately.

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91.07: Initiation of a Hearing on a Rate Filing

- (1) Time for Initiation. Except as otherwise provided in 211 CMR 91.00, a notice of hearing on any Rate Filing must be given within thirty days after a Rate Filing is submitted.
- (2) Initiation by the Commissioner. The Commissioner may, in his discretion, initiate a hearing on a Rate Filing. The Commissioner may consider the recommendations of the State Rating Bureau, established by M.G.L. c. 26, § 8E, in determining whether to initiate a hearing.
- (3) Request by the Attorney General. The Commissioner shall initiate a hearing on a Rate Filing if he receives from the Attorney General a written request to do so.
- (4) Request by Insurance Producer. The Commissioner shall initiate a hearing on a Rate Filing if he receives a written request to do so from any insurance producer of any Insurer to which such Rate Filing is applicable or from any association representing insurance producers, 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 states reasonable grounds.
- (5) Request by an Insurer, Insurance Company Group, or Rating Organization. At any time prior to the proposed effective date of a Rate Filing, the Commissioner shall initiate a hearing on the Rate Filing if he receives a written request to do so from the Insurer, Insurance Company Group or Rating Organization which submitted the Rate Filing; provided that, in the discretion of the Commissioner, there may be no hearing on a Rate Filing under 211 CMR 91.07(5) if, at any time prior to its effective date, the Commissioner approves the Rate Filing.
- (6) Form of Request. Concurrently with its request for a hearing made in accordance with 211 CMR 91.00, an initiating party shall submit to the Commissioner and to the Insurer, Insurance Company Group or Rating Organization which submitted the Rate Filing, a statement of issues specifying each aspect of the Rate Filing on which a hearing is sought.
- (7) Suspension of Operation of Rate Filings. At any time prior to the effective date of a Rate Filing, the Commissioner may suspend the operation of the Rate Filing for not more than 45 days after its proposed effective date in order to hold a hearing and make a decision on the Rate Filing. An Insurer or Insurance Company Group may put its Rate Filing into effect on its proposed effective date upon furnishing the Commissioner with a written agreement, secured by a sufficient bond satisfactory to the Commissioner, to adjust the premiums affected by that Rate Filing so as to comply with the final determination of the Commissioner. No Rate Filing which has been disapproved by the Commissioner shall be effective following the date specified in the Decision, which shall not be less than 15 days after the date of such disapproval.
- (8) Notice of Hearing. No less than 15 days prior to the scheduled date of a hearing, the Commissioner shall cause notice of the hearing to be given by publishing notice thereof in at least one newspaper printed in the Commonwealth. Concurrently with such notice, the Commissioner shall cause notice of hearing to be given to the Insurer, Insurance Company Group or Rating Organization which submitted the Rate Filing, to the Attorney General, to the Massachusetts Consumers' Council, and to any person who has filed a written request for notice in accordance with applicable regulations. Each notice shall contain:
 - (a) a statement of the date, time and location of the hearing;
 - (b) a statement of the subjects and issues involved in the hearing;
 - (c) a statement indicating whether or not the operation of Rate Filing has been suspended in accordance with 211 CMR 91.00; and
 - (d) a statement of procedures for appearing at the hearing.

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(9) Consolidation of Rate Filings for Purposes of Hearing. If the Commissioner determines that two or more Insurers, Insurance Company Groups or Rating Organizations have submitted Rate Filings which are similar in scope, he may, in his discretion, consolidate such Rate Filings for the purposes of hearing.

91.08: Pre-hearing Procedures

(1) Statutory Intervenors. No more than seven days following notice of a hearing, a Statutory Intervenor may submit to the Presiding Officer a notice of intent to appear as a Party.

(2) Petition for Leave to Participate as a Party. No more than seven days following notice of a hearing, any person, agency or organization that wishes to appear and present testimony at the hearing may submit to the Presiding Officer a petition for leave to participate as a Party.

(3) Request for Permission to Make an Oral Statement. No more than seven days following notice of a hearing, any person, agency or organization which has not submitted a petition for leave to participate as a Party may submit a written request to the Presiding Officer for permission to make an Oral Statement.

(4) Notice of Appointment of Counsel. Any Party which will be represented at a hearing by counsel shall submit a notice of appointment of counsel containing the name, address and telephone number of counsel. Any notice required to be given to a party pursuant to 211 CMR 91.00 may be given to the counsel named in the party's notice of appointment of counsel.

(5) Pre-Hearing Conference. No less than seven days prior to the scheduled date of a hearing, the Presiding Officer shall hold a prehearing conference for the resolution or simplification of issues and for any matters which may facilitate or expedite the completion of the hearing.

(6) Submission of Lists of Witnesses. No less than seven days prior to the scheduled date of a hearing, each Party shall submit to the Presiding Officer 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 upon which each witness will testify, and the approximate amount of time required for such testimony. The Presiding Officer may, in his discretion, determine the order of presentation of testimony.

91.09: Conduct of the Hearing

(1) Hearing Docket. The Division shall maintain a hearing docket and assign a number to each hearing. The Division shall enter in such docket all documents relating to each proceeding to which 211 CMR 91.00 applies.

(2) Ex Parte Communications. From the commencement of a hearing subject to 211 CMR 91.00 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 Officer with respect to the merits 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 by 211 CMR 91.09(2). If the Presiding Officer determines that a Party or his agent has violated 211 CMR 91.09, he may exclude the Party from the hearing or decide against him with prejudice. If the Presiding Officer determines that a person not a Party has violated 211 CMR 91.09, he may exclude that person from the hearing.

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(3) Oral Statements. The Presiding Officer may specify the amount of time allowed to any speaker for an Oral Statement. Although Oral Statements will generally be heard at the commencement of a hearing, the Presiding Officer may, in his discretion, grant permission to any person to make an Oral Statement at any time during a hearing. If he determines that an Oral Statement is irrelevant, immaterial or unduly repetitious, he may restrict the time allowed to a speaker. Persons making Oral Statements need not be sworn as witnesses.

(4) 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 discretion, hear oral argument on a motion prior to making a decision therein thereon.

(5) Objections to Rulings. At the time that the Presiding Officer makes a ruling, any party shall make known his objection to the ruling and his grounds therefor; 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 his objection and his grounds therefor.

(6) Official Notice. The Presiding Officer may take official notice of any fact which may be judicially noticed by the courts of this Commonwealth, and in addition, may take official notice of general, technical or scientific facts within his specialized knowledge or information contained in documents filed with the Division of Insurance; 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.

(7) Evidence. The Presiding Officer need not observe the rules of evidence observed by the courts of the United States or of this Commonwealth, 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 he determines 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 avail himself in making a decision, shall be offered and made a part of the record in the hearing.

(8) Cross-Examination and Rebuttal Evidence. Every party shall have the right to call and examine witnesses, to cross-examine witnesses, and to submit affirmative and rebuttal evidence.

(9) 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.

(10) Stipulations. At any stage of the hearing the parties may, either orally or in writing, stipulate to any pertinent facts. In making his findings, the Presiding Officer need not be bound by any such stipulation.

(11) Oral Argument. The Presiding Officer may, either on his own motion or on the motion of any party, allow and designate time for the presentation of oral argument.

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(12) Conduct of Persons Present. All Parties, counsel, witnesses and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the courts of the Commonwealth. Where such standards are not observed, the Presiding Officer may take such action as he deems appropriate to maintain order, including the exclusion of any disorderly person for the hearing. If the person so excluded is a Party or his agent, the Presiding Officer may decide against such Party with prejudice.

(13) Transcripts. All proceedings in a hearing shall be officially recorded and transcribed by a reporter approved by the Presiding Officer. Insurers, Insurance Company Groups and Rating Organizations which are Parties shall pay the cost of the reporter's fees, together with the cost of providing the Division with a copy of the transcript. Other Parties may obtain copies of the transcript from the reporter at cost.

91.10: Briefs

A Party may submit a brief to the Presiding Officer 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 Presiding Officer, except where a different number is permitted or directed by the Presiding Officer, and shall serve one copy on all other Parties.

91.11: Decisions

The decision of the Presiding Officer shall be in writing. It shall be accompanied by a statement of reasons therefor, 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. If the Presiding Officer is a person other than the Commissioner, he shall file the decision with the office of the Commissioner.

91.12: Appeals

(1) Appeal of decisions where the Presiding Officer is a person other than the Commissioner. Any person aggrieved by any finding, ruling or decision rendered upon a hearing held before a Presiding Officer other than the Commissioner may, within three days after receipt of such finding, ruling or decision or such further time as may be allowed by the Commissioner, appeal to the Commissioner, who shall review the case and who may modify, affirm or reverse such finding, ruling or decision.

(2) Review by the Commissioner. Upon the docketing of an appeal, the Commissioner shall set a date for the filing by the aggrieved party of a brief which shall state the grounds for the appeal and the remedy requested. The failure to file a brief within the time allotted shall be considered a waiver of the right to appeal. The Commissioner shall notify all other parties of the filing of an appeal and of the date upon which the appellant's brief is to be submitted. The Commissioner shall give other parties an opportunity to submit briefs by designating a date therefor. Notwithstanding the preceding sentence, if the Commissioner determines, following a review of the record, that the appeal is without substantial merit, he may dispose of such appeal without requesting briefs from the other parties. Prior to making any decision, the Commissioner may, in his discretion, request all parties to attend a conference to review and discuss the appeal.

91.13: Severability

The provisions of 211 CMR 91.00 are severable. If any provision of 211 CMR 91.00 is declared to be invalid for any reason, that declaration shall not affect the validity of any other provision of 211 CMR 91.00.

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91.14: Effective Date

The immediate adoption of 211 CMR 91.00 under M.G.L. c. 175E, § 10, is necessary in order to permit an orderly transition to competitive rating on commercial coverages. 211 CMR 91.00 are effective immediately.

REGULATORY AUTHORITY

211 CMR 91.00: M.G.L. c. 175A, § 15; c. 175E, § 10

NON-TEXT PAGE