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Amendments to the

Rules of Operation of the

Commonwealth Automobile Reinsurers

Docket No. C2004-02

Amended Decision and Order Following Remand on Changes to Rules of Operation 21 through 40

I. Background and Procedural History

This is the sixth in a series of decisions addressing Rules 21-40 of the Commonwealth Automobile Reinsurers ("CAR"), the operator of the residual market for motor vehicle insurance in Massachusetts. Rules 21-40 establish the Massachusetts Automobile Insurance Plan ("MAIP") as the mechanism for providing private passenger motor vehicle insurance to the residual market; those Massachusetts drivers who are unable to obtain such coverage in the voluntary market. The MAIP converts the residual market from a reinsurance pool (in which CAR members are responsible for a share of aggregate losses produced by business ceded to the pool that is proportional to their voluntary market share) to an assigned risk plan (in which each member is solely responsible for losses produced by individual risks assigned to it in proportion to its voluntary market share). CAR first submitted Rules 21-40 to the Commissioner for

approval on June 30, 2004; revisions were made and filed subsequently.[1] Five earlier decisions have been issued in this docket, each following a public hearing with both oral and written comments submitted to the docket.[2] A procedural history of the MAIP is attached to this Decision and Order as Appendix "A." The history of the early initiatives to reform the residual market that began in 2002 was reviewed in the *August 27 Decision* and the reasons supporting market reform were reviewed at length in the *November 23 Decision*; we therefore shall not repeat these matters here. The *December 31 Decision* approved the MAIP Rules, with an effective date of January 1, 2006.[3]

Days later, the Commerce Insurance Company ("Commerce"), the largest writer under the current system, appealed the *December 31 Decision* to the Superior Court. Its appeal principally challenged the authority of the Commissioner of Insurance ("Commissioner") to implement an assigned risk plan as the residual market mechanism; Commerce also raised a number of ancillary issues relating to the relationship between aspects of the proposed plan and Massachusetts statutes. The Superior Court stayed implementation of both the revisions to the current CAR Rules and the MAIP until the matter was resolved and, in June 2005, it allowed Commerce's motion for judgment on the pleadings. The Commissioner appealed the Superior Court's decision, and the Supreme Judicial Court allowed a motion for direct appellate review.

On August 23, 2006, the Supreme Judicial Court unanimously affirmed the Commissioner's authority to promulgate an assigned risk plan for the residual market for private passenger motor vehicle insurance. *Commerce Insurance Company, et al. v. Commissioner of Insurance*, 447 Mass. 478 (2006). The Supreme Judicial Court also found in favor of the Commissioner on all but one of the ancillary technical issues, the

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[1] The initial rules were remanded to CAR in August 2004 with instructions to resubmit revisions by September 24. A hearing took place in November 2004 on CAR's September submission; those rules, with further revisions, were approved on December 31, 2004. Later revisions were reviewed in October 2006.

[2] The five earlier decisions were issued on the following dates: August 27, 2004; November 23, 2004; December 31, 2004; December 13, 2006; and April 19, 2007. They will be referenced in this decision by those dates.

[3] The *December 31 Decision* also set out a sequence of timelines for implementation of changes to CAR Rules 1 through 20 prior to full implementation of the MAIP.

"Clean-in-Three" provision.[4] The Supreme Judicial Court remanded the Clean-in-Three provision to the Commissioner for further proceedings to address that part of the MAIP rules that would have rendered certain drivers with Clean-in-Three driving records ineligible for coverage through the MAIP, but possibly unable to obtain insurance in the voluntary market.[5]

To address these issues, the Commissioner reviewed the MAIP Rules that had been approved in the *December 31 Decision* and revised them to, among other things, set a new timetable for the implementation of the MAIP, make changes necessary to address the Court's remand regarding Clean-in-Three policyholders, and clarify procedures relating to the operation of the MAIP.[6] The result of that review was a set of revised rules known as the "Second Revised Rules." A hearing on the Second Revised Rules occurred on November 10, 2006, and the docket remained open through November 14 to receive additional statements. On December 13, 2006, the Commissioner issued a decision approving Proposed MAIP Rules 21-40, as well as certain amendments to CAR Rules 1-20, to be effective January 1, 2007. No appeal was taken from the *December 13 Decision* and the MAIP Rules went into effect on January 1, 2007, as scheduled.

A new Governor and administration took office in early January 2007. On January 19, 2007, the Acting Commissioner of Insurance suspended MAIP Rules 21-40 and the amendments to CAR Rules 1-20, pursuant to Article X of the CAR Plan of Operation. A hearing on the suspension was held on February 15. The speakers at that hearing included the Attorney General ("AG"), representatives of insurance companies and trade organizations, consumer advocates and producers. Their testimony, in large measure, reiterated concerns about the MAIP rules relating to Clean-in-Three drivers raised at earlier hearings. Some specific comments were made about burdens that might be placed on consumers because of the requirement that they obtain a letter from an insurer

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[4] A Clean-in-Three driver is an operator whose driving record shows no at-fault accidents resulting in an insurance claim, including a claim under the Personal Injury Protection coverage, or moving violations in the 36 month period preceding the application.

[5] By the date of the Supreme Judicial Court decision, the deadlines for MAIP implementation set out in the *December 31 Decision* had already passed.

[6] Concurrently, she reviewed amendments to the existing CAR Rules 1-20 that were needed because CAR had subsequently revised some of those Rules, as approved in the *December 31 Decision.*

declining voluntary coverage and a provision relating to the notice that a company would be required to give policyholders when a producer transferred a book of business from one insurer to another. Producers expressed continuing concerns that the MAIP Rules would adversely affect their interests, and that of consumers, in maintaining their historic role in the Massachusetts marketplace for motor vehicle insurance. The decision on rule suspension, issued on April 19, 2007, remanded MAIP Rules 21-40 to CAR with specific instructions to consider only the provisions relating to operators with Clean-in-Three driving records and to submit proposed amendments to the Commissioner within 30 days.[7] The *April 19 Decision* further stated that, following review of that submission, the Commissioner would decide whether to approve the MAIP Rules and the Clean-in-Three provisions contained in it.

On May 16, the CAR Governing Committee approved amendments to Proposed MAIP Rules 21, 22 and 26 (the "May 16 Amendments"); it distributed those amendments to its members on May 18 in Bulletin 842. On May 21, the Plymouth Rock Assurance Corporation ("Plymouth Rock") requested a hearing on the amendments. A hearing notice, scheduling a hearing for June 15, was issued on May 24. The notice emphasized that the Commissioner had remanded proposed MAIP Rules 21-40 to CAR solely for the purpose of making changes to those rules as they relate to motor vehicle operators with Clean-in-Three driving records, as defined in MAIP Rule 22. The purpose of the hearing, as set forth in the notice, was to "afford all interested parties an opportunity to provide oral and written testimony regarding the proposed amendments CAR approved on May 16, 2007." On May 24, Commerce also submitted a request for a hearing on the May 16 Amendments.

The June 15 hearing was again well attended. The 48 individuals who spoke included a representative of the AG, members of the legislature, and speakers presenting the positions of insurance companies, insurance agencies, consumer advocates, and trade associations. In addition, a number of written statements were submitted for the record. The record was closed at the end of the hearing. Although the stated purpose of the June

[7] Although the MAIP rules were remanded as a whole, CAR was directed to amend only provisions relating to Clean-in-Three drivers. The *April 19 Decision* also approved the changes to CAR Rules 2, 9, 11-14, and 17. Those changes, therefore, have been and are now in effect. No appeal was taken from the *April 19 Decision*.

15 hearing was solely to hear comment on CAR's proposed amendments relating to Clean-in-Three drivers, a preponderance of the testimony addressed more wide-ranging issues relating to whether the MAIP should be implemented.[8] Statements from participants who have consistently opposed the MAIP and those who have supported an assigned risk plan were consistent with the positions they have taken repeatedly in the past.

II. The May 16 Amendments

Rule 21. The proposed revision retains the procedure in G.L. c. 175, §113F, pursuant to which companies who intend to nonrenew a motor vehicle insurance policy must, if the policy was written through an insurance agent (*i.e.*, producer), send the notice of nonrenewal to the agent rather than directly to the consumer. The producer is responsible for sending the notice to the consumer, unless another insurer has written a policy to cover the risk. We find that the proposed rule is consistent with the statute and will preserve the current relationship between consumers and their producers. It is responsive to producer concerns that earlier proposals, designed to assist consumers with Clean-in-Three driving records to locate coverage in the voluntary market, would adversely affect that relationship.[9] In addition, in the event that a producer's book of business is transferred from one insurer to another, consumers who satisfy the Clean-in-Three criteria will retain that status with the successor insurer.

Rule 22. The sole change is a ministerial clarification that the definition of New Business will expire at the end of the transition period for MAIP implementation. No person objected to this change. Should it appear, at the end of the transition period, that the rule should be adjusted, CAR can consider appropriate changes.

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[8] Much of the commentary at the hearing and in the written statements reiterated positions previously asserted throughout the process of developing the MAIP Rules, regardless of changes made to those Rules.

[9] The *April 19 Decision*, 9-10, summarized the revisions made to the MAIP after the Supreme Judicial Court's remand decision that were intended to encourage insurers to write Clean-in-Three drivers in the voluntary market, and the concerns expressed at the November 10 hearing on those revisions. In response to those concerns, the MAIP Rules approved on December 13, 2006 incorporated further revisions. Continuing concerns on issues relating to Clean-in-Three drivers led to the suspension of the Rules in order to accept additional comment on them. Comments from speakers about such matters as the requirement that consumers obtain a declination letter in order to qualify for coverage through the MAIP persuaded the Commissioner to remand the MAIP to CAR again to address issues related to Clean-in-Three drivers.

Rule 26. The proposed change states that a signed application for assignment to an insurer through the MAIP is certification by the applicant or the applicant's agent that the applicant, within fifteen days before the date of the application, has been unable to obtain voluntary coverage. This amendment eliminates the need for a consumer who is unable to obtain voluntary insurance to complete a separate certification form signed under the pains and penalties of perjury. As revised, the rule also eliminates the requirement that insurers inform the applicant in writing of the reasons for declining the business, and the consumer's option to have CAR notify all members, on expiration of the policy, that he or she may be eligible for the voluntary market.

The proposed self-certification process for obtaining coverage through the MAIP will be less cumbersome for producers and consumers, as well as insurers. Consumers need not fill out an additional form. Insurers are no longer required to provide a written explanation of the reasons for declining coverage in the voluntary market. Consumers will now know that an insurer has declined to write a policy for them, something they now do not know. They also will be able to find out why the insurer has declined their business. This type of notice is precisely the kind of incentive to motivate high-risk drivers to improve their driving records, thereby reducing our high accident rate. As revised, the rule eliminates the concern that a consumer's privacy would be compromised with the dissemination of that consumer's information to all CAR members; the rule also preserves relationships between consumers and producers. The May 16 Amendments are responsive to and are appropriate resolutions of evolving issues relating to Clean-in-Three drivers that have been under discussion since the Supreme Judicial Court remanded the matter to the Commissioner.

III. Conclusion and Order

We have reviewed CAR's proposed amendments to the MAIP Rules 21, 22 and 26. They constitute reasonable responses to concerns raised at the February 15 hearing on the suspension of the Rules and to the directives in the *April 19 Decision* and the May 24, 2007 hearing notice. We also amend, to conform to the changes recommended by CAR, the MAIP Rules 24, 29 and 31, which apparently were overlooked erroneously by CAR in its response to the remand regarding Clean-in-Three provisions in the MAIP. Viewed as a

whole, the provisions in the MAIP Rules relating to Clean-in-Three policyholders, as approved in the *December 13 Decision* and revised in accord with the May 16 Amendments, are appropriate and reasonable. In their entirety, the MAIP Rules, as amended, appropriately balance the interests of all parties to the insurance transaction, including consumers, producers and insurers, and will ensure that the residual market satisfies the statutory requirements. These changes have been incorporated into the copy of MAIP Rules 21-40 attached as Appendix "B" to this Decision and Order.

As stated in the *April 19 Decision*, the timetable for implementation of the MAIP set out in the *December 13 Decision* has become outdated, and amendment of the time frames is required. The Commissioner therefore has amended Rules 21, 22, 26, 29 and 31 to set new dates in connection with the transition to the MAIP. These changes also have been incorporated into the copy of MAIP Rules 21-40 attached as Appendix "B" to this Decision and Order.

CAR Rules 21-40, as amended by the May 16 Amendments, and with the other changes referred to above, are hereby approved.[10]

DATED: July 16, 2007

Nonnie S. Burnes	Jean F. Farrington	Stephen M. Sumner
Commissioner of Insurance	Presiding Officer	Presiding Officer

[10] On January 15, CAR approved amendments to Rules 26, 28, 29 and 30. The Arbella Mutual Insurance Company ("Arbella") requested a hearing on those amendments. The matter was assigned docket number C2007-1, but proceedings were stayed pending a decision on approval of the MAIP Rules following remand as ordered in the *April 19 Decision*. A separate order will issue scheduling a hearing on Arbella's request.