

# Massachusetts Workers' Compensation Assigned Risk Pool

## PLAN OF OPERATION

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### ARTICLE I

#### NAME

**Name.** The reinsurance pool contemplated by G.L. c. 152, § 65C, as amended, shall be known as the Massachusetts Workers' Compensation Assigned Risk Pool (the "Pool").

### ARTICLE II

#### DESIGNATION OF ADMINISTRATOR

**Designation of Administrator.** The Pool shall be administered, in accordance with G.L. c. 152, § 65A et seq., as amended, by The Workers' Compensation Rating and Inspection Bureau of Massachusetts (the "Bureau").

### ARTICLE III

#### PURPOSE AND LIMITATIONS

1. **Purpose.** It is the purpose of the Pool to provide a mechanism for the equitable distribution among insurers of risks entitled to coverage under G.L. c. 152, § 65A, as amended, and to provide, in accordance with G.L. c. 152, § 65C, as amended, for the equitable allocation among all insurers authorized to write workers' compensation insurance in the Commonwealth of the losses incurred on policies issued to employers under § 65A.

Under delegation from the Commissioner of Insurance (the "Commissioner"), the Bureau shall make equitable assignments of risks entitled to coverage under G.L. c. 152, § 65A, as amended, including assignments to servicing carriers or voluntary direct assignment carriers. The Bureau shall each year submit to the Commissioner a report of the assigned risks for the preceding year.

The Bureau is authorized to enter into agreements on behalf of the members of the Pool to carry out the purposes of this Plan including but not limited to servicing carrier agreements. The Bureau is empowered to act as attorney-in-fact for each member of the Pool, to enforce any rights of the members of the Pool, including without limitation, any rights against any other member of the Pool upon insolvency, to prosecute, to defend, to submit to arbitration, to settle and to propose or to accept a compromise with respect to any claim existing in favor of, or

*Effective June 8, 1994*

against, such member based on or involving any matter relating to this Plan or to intervene in any action or proceeding related thereto.

**2. Limitations.** This Plan of Operation shall apply only to workers' compensation policies including any one or more of the following coverages provided under such policies:

- a. Statutory workers' compensation and occupational disease as provided in G.L. c. 152.
- b. Employers' Liability when written in combination with coverage as specified in (a) above.
- c. Such other coverages as the Bureau may file for approval by the Commissioner for inclusion in the standard Workers' Compensation and Employers' Liability Insurance Policy.

This Plan of Operation shall apply to policies issued to employers whose risks have been assigned to and accepted by members of the Pool in accordance herewith, and to become effective on or after 12:01 a.m. of the effective date.

#### ARTICLE IV

##### MEMBERSHIP

**1. Membership.** Every insurer, as defined in G.L. c. 152, § 1(7), and any insurance company, reciprocal or interinsurance exchange which has contracted with an employer to pay the compensation provided for by G.L. c. 152, that is authorized to write or to continue to write workers' compensation insurance in the Commonwealth shall be a member of the Pool.

**2. Insolvency.**

- (a) In the event any member company shall become insolvent, as hereinafter defined, membership of such company in the Pool shall be deemed terminated at the time such company becomes insolvent subject to the further provisions of subparagraph 2(g) hereunder. As used herein, "insolvent" means being the subject of receivership, conservatorship, rehabilitation, liquidation, or similar proceedings, whether voluntary or involuntary, in any jurisdiction.
- (b) Upon notice to the Bureau of the insolvency of a member company which is acting as a servicing carrier or as a voluntary direct assignment carrier, the Bureau shall reassign all risks previously assigned to the insolvent company to one or more servicing carriers or voluntary direct assignment carriers in accordance with the procedures set forth in this Plan.

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- (c) In the event a servicing carrier becomes insolvent, the Bureau, acting on behalf of each of the members, shall have the option to:
- (i) pay to The Massachusetts Insurers Insolvency Fund, or to the receiver, conservator, rehabilitator, liquidator or other appropriate representative all losses and expenses for which such insolvent company shall have become liable upon risks to which this Plan of Operation applies; or
  - (ii) subject to the approval of the receiver, conservator, rehabilitator, liquidator or other representative, and subject to the approval of any court having jurisdiction over the proceedings, terminate the obligation of the members of the Pool to such insolvent company to reinsure such insolvent company for losses and expenses for which the insolvent company shall have become liable upon risks to which this Plan of Operation applies. If this option is exercised, the Bureau shall make arrangements to reassign all risks being serviced by such insolvent member to a successor servicing carrier. Such successor servicing carrier shall assume all the duties and obligations of the insolvent carrier and shall accede to the reinsurance provided by the members of the Pool. Payment made on account of such risks, including expenses for the servicing thereof, shall be apportioned ratably among the remaining members of the Pool in accordance with the method provided for the apportioning of assessments.
- (d) The outstanding liability to the members of the Pool of any insolvent member, whether in its capacity as a servicing carrier, or as a member, except for the unexpended portion of any premium retained by a servicing carrier for servicing an assigned risk, shall, in the event of insolvency, be assumed by and apportioned among the remaining members of the Pool in the same manner as liability for assessments is apportioned under this Plan. The right of such insolvent member to participate in the Pool or the funds thereof, except as to any refund if the right to such refund shall have accrued before the date of insolvency, shall thereupon terminate. No refund shall be made to such insolvent company until all its liabilities to the members of the Pool and all liabilities assumed by members of the Pool by virtue of the provisions of this Plan shall have been fully settled and satisfied.

In the event a direct assignment carrier becomes insolvent, the Pool shall have no obligation to pay any losses and expenses for which such insolvent company shall have become liable upon risks to which the Plan of Operation applies except to the extent, if any, that the Massachusetts Insurers Insolvency Fund or any successor entity is not obligated to pay such losses and expenses under the provisions of G.L. c. 175D.

The Pool members shall have all the rights allowed by law against the estate or funds of insolvent carriers for recovery of funds disbursed (including the payment of losses and servicing expenses) on risks carried by insolvent members as herein provided. The Bureau may assert and enforce such rights on behalf of the members

of the Pool.

The provisions of this section are subject to any other or further provisions with respect thereto which may be from time to time embodied in the rules and procedures adopted hereunder.

- (e) Any insolvent member company which fails or has failed to make timely payment of any assessment made under this Plan of Operation shall become liable to the members of the Pool, as of the earliest date on which such failure to pay occurs, for an additional amount equal to the commuted value on such date of all future assessments to be made against such member company. For the purposes hereof, such commuted value shall be the total amount of unearned premium reserves and loss reserves then allocated to such member company hereunder, as determined by the Bureau. The liability of the insolvent member company for such commuted value under this provision shall be deemed fixed, liquidated, and non-contingent as of the date of such failure to pay. The Bureau may assert and enforce such liability on behalf of the members of the Pool.
- (f) The Bureau shall have the discretion to terminate the membership of any or all affiliated companies of the insolvent company. No termination of an insolvent company or any or all companies described in this Section shall be deemed in abrogation of the membership requirement in Article IV, Section 1.
- (g) Anything in this Section to the contrary notwithstanding, the Bureau may, in the event such action is in its judgment feasible and desirable, and in a manner equitable to all members, elect not to terminate the membership of such insolvent company, and permit such company to continue to be a member of the Pool upon such conditions as it may prescribe and subject in all respects to this Plan of Operation and the rules and procedures hereunder as then constituted.
- (h) No member of any Committee of the Bureau representing an insolvent company or affiliate thereof may vote in any proceeding under this Section.
- (i) Nothing in this Section relating to the insolvency of a member company shall, without the express approval of the Bureau, increase the total liability of all members of the Pool (excluding the obligations of the insolvent member) to an amount greater than what the liability would have been if the insolvency had not occurred.

**3. Member Obligations.** Any or all member companies shall, at the discretion of the Bureau, be required to periodically provide, at intervals to be determined by the Bureau, information on the ability to pay return premiums, losses and expenses which may be assessed pursuant to Article XIII, Section 7 for all risks which are subject to this Plan of Operation. Member companies shall provide all further information necessary for the Bureau to determine whether a company's ability to pay its obligations to the Pool members, and for the Bureau to determine

if there is any significant likelihood that the company's future reserves will be inadequate to meet future obligations. Member companies shall cooperate fully in assisting the Bureau in making these determinations, and shall cooperate fully in the conduct of any auditing procedure necessary to these determinations. Should the Bureau determine that a company's reserves are not adequate to meet its obligations to the Pool members, or that there is a significant likelihood that future reserves will be inadequate to meet future obligations, or should the Bureau determine that the member company has not cooperated to the extent necessary to make these determinations, the Bureau shall have the authority to ensure that the member company has reserves adequate to protect the other members of the Pool by taking actions which may include, but need not be limited to, any or all of the following:

- (a) Ordering that all premium distributions or refunds due the member company be paid into escrow or trust with the Bureau to secure the member's obligations.
- (b) Ordering that all premium distributions or refunds due the member company be paid in trust with a third party to secure the member's obligations.
- (c) Ordering that the member company obtain a letter of credit approved by the Bureau to secure the company's future liabilities.

Compliance with any such order within the time specified therein shall be an obligation of membership.

## ARTICLE V

### MEETINGS AND VOTING RIGHTS

1. **Regular Meetings.** An annual meeting of the Pool membership shall be held in the City of Boston, Massachusetts, on such date and at such time and place as may be specified in the notice of meeting.

In case the annual meeting for any year shall not be duly called or held, the Residual Market Committee shall cause a special meeting to be held as soon as may be practicable thereafter, in lieu of and for the purpose of such annual meeting, and all proceedings at such special meeting shall have the same force and effect as if taken at the regular annual meeting.

2. **Special Meetings.** Special meetings of the Pool membership may be called at any time by the President of the Bureau, and shall be held in the City of Boston, Massachusetts, at such time and place as may be specified in the notice of meeting. Special meetings shall be called by the President of the Bureau upon the written request of a majority of the Residual Market Committee, or of five members of the Pool.

3. **Notice of Meetings.** At least ten days' written notice of all meetings of the Pool membership shall be given and in each case an agenda of matters to be considered shall

accompany the notice of meeting. Only those matters which are noted in the agenda shall be considered at such meetings, provided, however, that other matters may be considered upon unanimous consent of the members present.

**4. Quorum.** At an annual or special meeting of the Pool membership, members writing not less than 51% of the total net workers' compensation insurance premiums written by all members of the Pool during the latest calendar year for which information is available, shall constitute a quorum.

**5. Voting Rights.** In any meeting of the Pool membership, each member of the Pool shall be entitled to one vote.

At any meeting of the Pool membership, proposed actions shall be deemed adopted when an affirmative vote has been cast by members writing not less than 51% of the total net workers' compensation insurance premiums written by all members of the Pool during the latest calendar year for which information is available. Action may also be taken, without a meeting, by mail or telephone upon affirmative vote of members writing not less than 51% of the total net workers' compensation insurance premiums written by all members during the latest calendar year for which information is available, provided all members of the Pool are polled. In the event of a tie vote, the motion fails adoption.

**6. Proxies.** Members may be represented at any meeting by proxy. Members may record their votes by mail on written propositions, and such votes shall have the same standing as if cast by such members in person or by proxy.

**7. Records of Meetings.** Records of all meetings of members of the Pool shall be provided to members of the Pool and to the Commissioner.

## ARTICLE VI

### RESIDUAL MARKET COMMITTEE

**1. Appointment and Composition.** At each annual meeting of the Bureau, the members of the Governing Committee shall appoint the members of the Residual Market Committee who shall serve until the next annual meeting. The Committee shall be composed of not more than ten (10) members. The President of the Bureau shall be a member ex officio of the Committee, but shall not have the right to vote. The Committee shall have a mixture of eight (8) Pool and two (2) non-Pool members. One non-Pool member shall represent policyholders' interests and the other shall represent producers' interests. No more than six (6) of the eight (8) Pool members shall be servicing carriers. Pool memberships shall be in the name of the member company, which shall designate knowledgeable representatives of suitable senior standing. Each company member of the Committee shall select two (2) alternates of similar standing.

**2. Powers.** The Residual Market Committee shall monitor and administer the Pool, unless the Governing Committee of the Bureau otherwise directs.

**3. Organization and Procedure.** The Committee shall be presided over by a Chairperson, who shall have the right to vote, chosen by it from among its members by an election at its first meeting following the annual meeting of the Bureau. A Vice Chairperson shall be elected in the same manner and shall preside in the absence of the Chairperson.

**4. Meetings; Time, Place and Notice.** Meetings shall be held at such times and places as the Committee may from time to time determine, and may be called at any time by the President of the Bureau, and shall be so called by the President upon the written request of any two members of the Committee. At least ten days' written notice of all meetings of the Residual Market Committee shall be given and in each case an agenda of matters to be considered shall accompany the notice of meeting. Only those matters which are noted in the agenda shall be considered at such meetings, provided, however, that other matters may be considered upon unanimous consent of the members present.

**5. Quorum and Voting Rights.** A majority of the members of the Committee shall constitute a quorum. An affirmative vote of a majority of the members present and voting shall be necessary for the adoption of any proposed action, subject to the requirement that there be at least one affirmative vote of a stock carrier and one affirmative vote of a non-stock carrier. A mail vote or a telephone vote may be taken and such vote shall be binding unless the dissenting voter(s) requests a meeting at the time of such vote. Voting by proxy shall be permitted.

**6. Conditions.** The Committee may fix the conditions upon which assigned risks are afforded coverage and upon which claims shall be handled by servicing carriers. All risks serviced by servicing carriers shall be insured and all claims shall be handled by such carriers in accordance with such conditions.

**7. Disputes and Appeals.** In addition to the powers elsewhere conferred upon it by this Plan of Operation, the Residual Market Committee may sit as an "Appeals Committee" or may designate a subcommittee of at least three but not more than five members, to act as an Appeals Committee to pass upon all disputes arising with respect to this Plan of Operation, or rules promulgated thereunder, including without limitation, any questions as to the application, scope and effect of this Plan of Operation. Any subcommittee designated to act as an Appeals Committee shall include the appointment of a public member and, at the least, one stock and one non-stock carrier member of the Residual Market Committee. A ruling of a majority of the Appeals Committee shall be final, unless within thirty (30) calendar days after the mailing of notice of the Committee's ruling, the aggrieved party shall have appealed the ruling in writing to the Commissioner. The aggrieved party shall send a copy of such appeal to the Committee. The action of the Commissioner upon such ruling shall be final.

**8. Servicing Carriers.** The Committee shall establish qualifications and other conditions for designating servicing carriers.

**9. Audit and Inspections.** The Bureau shall have the right, through its representatives, at all reasonable times during the business day, to audit and inspect the books and records of any voluntary direct assignment carrier or servicing carrier with respect to any policy or policies and claims thereunder coming within the purview of this Plan of Operation.

**10. Rules of Operation.** The Committee shall have the power, subject to the approval of the Commissioner, to promulgate and adopt Rules of Operation for the purpose of implementing this Plan. Such Rules may be made at the direction of the Commissioner, upon reasonable notice to the Bureau and after a hearing.

**11. Records of Meetings.** Records of all meetings of the Residual Market Committee shall be provided to its members and to the Commissioner.

## ARTICLE VII

### SERVICING CARRIERS

**1. Designation.** The Bureau may recommend the designation of one or more insurers as servicing carriers to issue policies of insurance to employers qualified for coverage under G.L. c. 152, § 65A, as amended, subject to the approval of the Commissioner. The designation may be rescinded for cause by the Bureau, subject to the approval of the Commissioner. The designation may also be rescinded by the Commissioner.

**2. Criteria for Selection.** Any member of the Pool may apply to the Pool for servicing carrier designation provided the member company:

- (a) has been writing workers' compensation insurance in the Commonwealth of Massachusetts during at least the five (5) years immediately preceding the request to be designated a servicing carrier;
- (b) has and maintains a record of financial stability and strength;
- (c) has and maintains, at a minimum, a workers compensation voluntary market share of 1% in the Commonwealth of Massachusetts; and
- (d) has and maintains the capacity to conform to such standards of performance ("Standards") as are from time to time promulgated by the Residual Market Committee.

A servicing carrier's failure to maintain eligibility shall be considered cause for rescinding its designation as servicing carrier.



**3. Performance Standards.** The Standards shall address but not be limited to; (a) underwriting and audit, (b) loss control, (c) claims, and (d) collections. Should a servicing carrier fail to meet the Standards, the Bureau will cause to be issued a notice to such carrier that it is not in compliance with the Standards. The notice shall direct the servicing carrier to prepare a plan for achieving compliance with the Standards including appropriate time tables. The servicing carrier shall submit its plan to the Bureau, which shall thereafter file a report with the Commissioner, including appropriate recommendations, if any.

**4. Compensation.** Servicing carriers shall be compensated on a reasonable basis in the manner approved by the Commissioner.

## ARTICLE VIII

### VOLUNTARY DIRECT ASSIGNMENT CARRIERS

**1. Designation.** Any Pool member may apply to the Commissioner of Insurance for designation as a voluntary direct assignment carrier based upon selection criteria approved by the Commissioner. The Commissioner may rescind this designation for cause.

**2.** The performance standards applicable to servicing carriers as set forth in Article VII, Section 3, shall also apply to voluntary direct assignment carriers.

## ARTICLE IX

### FISCAL MATTERS

**1. Fiscal Year.** The fiscal year for the purpose of administering this Plan shall be the calendar year unless otherwise established by the Residual Market Committee.

**2. Deposits.** Funds held temporarily by the Bureau for the benefit of members of the Pool, may be kept on deposit in such banks, trust companies or other depositories as may from time to time be designated and prescribed by the Residual Market Committee; and such designation shall be evidenced by an instrument signed by the Chairperson or the Vice-Chairperson of the Residual Market Committee, and countersigned by the President of the Bureau or the Treasurer. Accurate records shall be kept to identify the funds so deposited.

**3. Withdrawals.** Any two (2) officers of the Bureau duly authorized by the Residual Market Committee shall have power to sign and countersign all checks, drafts or other orders for payment of money and to cause the endorsement of all commercial paper payable under this Plan.

4. **Special Accounts.** Funds temporarily held for the benefit of members also may be kept on deposit with any authorized depository, but in a special account designated as such, subject to withdrawal upon check signed by any two (2) of the officers of the Bureau duly authorized by the Residual Market Committee if authorized by, and subject to, the terms and conditions contained in a written instrument signed by any two (2) of the officers of the Bureau authorized by the Residual Market Committee. Accurate records shall be kept to identify the funds so deposited.

5. **Safe Deposit.** Access may be had to any safe deposit box, hired vault, or like place of safekeeping, standing in the name of the Pool, by any two (2) officers of the Bureau, duly authorized by the Residual Market Committee.

6. **Investment Income.** All income on the funds held for the benefit of members of the Pool shall, upon receipt thereof, become subject to all the appropriate provisions of this Plan.

## ARTICLE X

### INDEMNIFICATION

**Indemnification.** Any person or insurer made, or threatened to be made, a party to any action, suit or proceeding, because such person or insurer was a member of the Pool, or a servicing carrier, or served as a member or representative of a member on the Residual Market Committee or other Bureau committee, or was an officer or employee of the Bureau acting on behalf of the Pool, shall be indemnified against all judgments, fines, amounts paid in settlement, costs and expenses including attorney's fees, and any other liabilities that may be incurred as a result of such action, suit or proceeding, or threatened action, suit or proceeding, except in relation to matters as to which he, she or it shall be adjudged in such action, suit or proceeding to be liable by reason of willful misconduct in the performance of his, her or its duties or obligations to the Pool and, with respect to any criminal actions or proceedings, except when such person or insurer had reasonable cause to believe that his, her or its conduct was lawful. Such indemnification shall be provided whether or not such person or insurer is a member of the Pool, or a servicing carrier, or is holding office, or is employed at the time of such action, suit or proceeding, and whether or not any such liability is incurred prior to the adoption of this Article. Such indemnification shall not be exclusive of other rights such person or insurer may have, and shall pass to the successors, heirs, executors or administrators of such person or insurer. The termination of any such civil or criminal action, suit or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such person or insurer was liable by reason of willful misconduct, or that he, she or it had reasonable cause to believe that his, her or its conduct was unlawful. If any such action, suit or proceeding is compromised, it must be with the approval of the Residual Market Committee; provided, however, that the Residual Market Committee may delegate to the President of the Bureau the authority to approve any such compromise of financial liability requiring payment by the Pool which is less than an amount as may be fixed from time to time by the Residual Market Committee.

In each instance in which a question of indemnification arises, entitlement thereto, pursuant to the conditions set forth in this Article, shall be determined by the Residual Market Committee, which shall also determine the time and manner of payment of such indemnification; provided, however, that a person or insurer who or which has been wholly successful, on the merits or otherwise, in the defense of a civil or criminal action, suit or proceeding of the character described in this Article shall be entitled to indemnification as authorized herein. The Residual Market Committee may delegate to the President of the Bureau the authority to determine, in a manner consistent with this Article, entitlement to indemnification, and the time and manner of payment of such indemnification, for any indemnification requiring payment by the Pool which is less than an amount as may be fixed from time to time by the Residual Market Committee. Nothing herein shall be deemed to bind a person or insurer who or which the Residual Market Committee has determined not to be entitled to indemnification, or to preclude such person or insurer from asserting the right to such indemnification by legal proceedings. Such indemnification as is herein provided shall be apportioned among all members, including any named in any such action, suit or proceeding pursuant to this Plan of Operation.

## ARTICLE XI

### AMENDMENTS

**Amendments.** Amendments to this Plan of Operation may be made by the Bureau or may be made at the direction of the Commissioner upon reasonable notice to the Bureau and after a hearing, pursuant to G.L. c. 152, § 65C. All amendments to the Plan of Operation proposed by the Bureau shall be submitted to the Commissioner for approval and shall be effective as of the date indicated in the Commissioner's approval.

## ARTICLE XII

### EFFECTIVE DATE

**Effective Date.** This Plan of Operation shall become effective July 1, 1991, or at such later time as it has been approved by the Residual Market Committee, the Governing Committee of the Bureau, and the Commissioner of Insurance.

## ARTICLE XIII

### ASSIGNMENTS, ASSESSMENTS AND EXPENSES

**1. Application.** This Plan shall apply to all risks that are insured or seek to be insured through the Massachusetts Workers' Compensation Assigned Risk Pool. An application for workers' compensation insurance to be written through the Pool must be submitted to the Bureau on a form and in the manner prescribed by the Residual Market Committee.

**2. Assignment of Risks.** The Bureau shall review the information contained in an application for assignment and determine whether the applicant is eligible for assignment under G.L. c. 152, § 65A.

If the Bureau determines that an applicant is eligible for assignment, the Bureau shall assign the applicant to a servicing carrier or voluntary direct assignment carrier. The Bureau will equitably assign applicants to each voluntary direct assignment carrier based on each such carrier's percentage of the total net workers' compensation insurance premiums written, as adjusted by any applicable take-out credit, for all carriers in that policy year. Applicants not assigned to a voluntary direct assignment carrier will be assigned to each servicing carrier based on each servicing carrier's percentage of the total net workers' compensation insurance written premiums for all servicing carriers in the most recent policy year for which data is available. A reconciliation procedure for voluntary direct assignment carriers shall be established in accordance with such rules and procedures as the Residual Market Committee may adopt, subject to the approval of the Commissioner. Assignments may also be made in accordance with other specific rules and procedures as the Residual Market Committee may adopt, subject to the approval of the Commissioner pursuant to G.L. c. 152, S. 65A. The Bureau shall, upon the request of any servicing carrier or voluntary direct assignment carrier, provide such servicing carrier, or voluntary direct assignment carrier with a copy of the records used as the basis for assigning eligible applicants.

**3. Premiums.** With the exception of voluntary direct assignment carriers, the Bureau shall distribute the premiums received from Servicing Carriers to the members of the Pool in proportion to their workers' compensation insurance premiums written in the state on a calendar year basis, or as otherwise determined by the Residual Market Committee.

**4. Expenses and Payments.** The amount of net workers' compensation insurance premiums written and used as the basis of all computations in this Section, or elsewhere in this Plan of Operation, shall also be used as the basis for allocating each member's share of expenses which are not allocable directly to any assigned risk and which are incurred by the Bureau in the administration of the Pool. A record shall be kept of all such expenses, and the amount thereof may be recovered from members who satisfy their obligations under the Plan by participating in the reinsurance pool, by a charge against funds held by the Bureau on behalf of such members, or, in the discretion of the Bureau and when deemed necessary, by an assessment levied under Section 7 of this Article. Voluntary direct assignment carriers shall be separately billed for their portion of such administrative expenses. In addition, voluntary direct assignment carriers shall be separately billed for expenses associated with inspection and audit and such other expenses of oversight as may be appropriate, which are directly allocable to risks assigned to such carriers. Except with respect to claims, the cost of the interpretation of physical and X-ray examinations of employees in assigned dust hazard risks, shall be a proper charge against, and shall be paid from, the general funds held on behalf of the members of the Pool provided the employer pays for the making of such examinations. Except as the Residual Market Committee shall otherwise direct, payments to or in behalf of members shall be limited to administration expenses, reimbursement for losses paid under policies to which these Articles

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apply, and for return premiums on such policies, and the payment of such refunds as may be allowed under this Plan of Operation. Except for costs of premium collection as provided in the Servicing Carrier Agreement, the Pool shall not assume for payment, and shall not be liable to pay, any expenses of any nature whatsoever incurred by members.

**5. Examinations and Reserves.** The Residual Market Committee shall make or cause to be made such review as they may deem necessary of loss payments by members and reserves held by members for outstanding claims, which reserves, until the Committee shall have determined upon a different reserve, shall be the estimated value of the claims reported by the servicing carrier under the applicable servicing carrier agreement.

**6. Transactions, Accounts and Financial Statements.** Separate accounts shall be maintained by the Bureau covering transactions for each policy year. The Bureau shall prepare and deliver to the members a financial statement showing the apportionment of the expense of administration provided for herein and the condition of each account.

**7. Assessments and Refunds.** Assessments shall be levied or refunds allowed by the Bureau as it may from time to time deem reasonable and necessary. Assessments or refunds for account of a specified policy year shall be levied upon or allowed to all members who were such during the calendar year corresponding to such policy year, and each member shall pay such proportion of such assessment, and shall receive a proportionate share of such refund, as is determined by the relation which the net workers' compensation insurance premiums written during such calendar year by such member shall bear to the total net workers' compensation insurance premiums written during such calendar year by all members. A member may satisfy its obligation under this section by becoming a voluntary direct assignment carrier, and by satisfactorily discharging its responsibilities as a voluntary direct assignment carrier in accordance with this Plan and the rules governing the Voluntary Direct Assignment Program.

The amount of net workers' compensation insurance premiums written, which shall serve as the basis of all computations in this Section or elsewhere in this Plan of Operation and in the applicable servicing carrier agreement, shall be that shown by the records of the Bureau. If the amount of net workers' compensation insurance premiums written for a specified calendar year is not available at the time of the levying of any assessment or the distribution of any refund, net workers' compensation insurance premiums written for the preceding calendar year shall be used as the basis for a preliminary assessment or refund, but such preliminary assessment or refund shall be adjusted as soon as the net workers' compensation insurance premiums written for the specified calendar year become available. For the purposes of this section, the net written workers' compensation insurance premiums associated with large deductible policies which are written or renewed on or after January 1, 1994, or are in effect on or after January 1, 1995, shall be deemed to be the amount equal to the standard premium plus any applicable All Risk Adjustments Program amounts associated with such policies.

The amount of any assessment levied shall be paid within, and the amount of any refund allowed shall be distributed within, such reasonable time as may be determined by the Residual

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Market Committee, following the submission of the quarterly, or other statement referred to herein.

The Bureau shall, upon request of a member, provide such member with a copy of the records used as the basis of calculating the member's assessment or refund.

Any member that wrote Massachusetts workers' compensation insurance in the voluntary market in 1990, but that was not assessed or allowed a refund for account of policy year 1990 in connection with any deficit or surplus resulting from the operation of the workers' compensation insurance assigned risk pool in Massachusetts, may apply to the Commissioner to be certified for lump sum payments of pool liabilities for account of policy years 1991, 1992 and 1993. The lump sum payment shall equal the product of the eligible member's pool participation ratio and the present value at the time of the lump sum payment of the residual market results, for each respective policy year.

The Commissioner shall determine the present value of the residual market deficit for policy year 1991 in 1/1/94 dollars based on a discounted cash flow analysis with appropriate inputs selected by the Commissioner.

The Commissioner, if he or she deems it appropriate and necessary, shall determine the present value of the residual market results for policy years 1992 and 1993 in 1/1/95 dollars and 1/1/96 dollars, respectively. These determinations shall be made prior to 1/1/95 and 1/1/96 for each respective policy year. Certified members shall be eligible for lump sum payments for policy years 1992 and 1993, unless the Commissioner deems it inappropriate or unnecessary to determine the above mentioned residual market results.

These lump sum payments for policy year 1991 shall be paid to the pool by February 1, 1994 or an eligible member may elect to make payments on an installment plan whose term will end not later than December 31, 1995 and at an annual interest rate of 5% or at such other rate as the Commissioner may determine. These payments shall be used to pay pool liabilities for policy year 1991. Eligible members that elect to make a lump sum payment for policy year 1991 shall have their otherwise determined participation ratios set equal to zero for that policy year. Members that do not make these lump sum payments shall have their participation ratios increased in proportion to their otherwise determined participation ratio so that the sum of all members' participation ratios equals unity. Lump sum payments for policy years 1992 and 1993 shall be implemented in an analogous manner as described above.

In order to be certified for lump sum payments for policy years 1991, 1992 and 1993, the following requirements must be met:

- (a) By January 20, 1994, the member must file with the Division of Insurance documentation demonstrating to the satisfaction of the Commissioner that its failure to be certified for lump sum payments would threaten its technical solvency pursuant to statutory accounting principles. At such time the member shall indicate whether it will,

if certified, elect the lump sum payment option for policy year 1991 or whether such filing is solely for financial reporting requirements as set forth below. Within thirty days of any determination by the Commissioner of the present value of the residual market results for policy year 1992 or policy year 1993, the member shall indicate whether it is electing the lump sum payment option.

- (b) Prior to issuance of an order of certification the Commissioner shall require such member to demonstrate that it can meet its obligations under the lump sum payment plan set forth herein as well as obligations for pool liabilities and voluntary writings for policy years 1994 and beyond. In order to so demonstrate, such member must submit a satisfactory business plan describing the changes that would be made in the business and operations of the member in order to meet such obligations. The Commissioner may require such alterations to said plan as he or she deems necessary and may require that an independent actuarial review be performed at the member's expense.

Members who are certified and elect to make a lump sum payment for their pool liabilities for policy year 1991 shall reflect these liabilities in all required statutory filings (including Quarterly and Annual Statements) with the Division of Insurance beginning with their 1993 Annual Statement. Members who are certified and do not elect to make a lump sum payment for their pool liabilities for policy year 1991 shall reflect their pool liabilities for policy year 1991 as if they had elected to make the lump sum payment as described above in all statutory filings made in 1994 (including the 1993 Annual Statement). In addition, for all such statutory filings made in 1994 (including the 1993 Annual Statement) certified members shall not reflect any results of pool operations for policy years 1992 and 1993. For all statutory filings made after 1994, the Commissioner shall determine the manner in which certified members shall reflect their pool liabilities for policy years 1991, 1992 and 1993.

Any funds in escrow accounts established for an eligible member for those policy years where a lump sum payment will be made shall be returned to the pool.

For policy years 1994 and beyond, all pool members may apply to the Commissioner to be certified for lump sum settlement in a manner analogous to that set forth above.

**8. Netting Out.** Notwithstanding any contrary provisions in this Plan, and notwithstanding any contrary forms of accounting methods or reports that may for convenience be used to determine the underlying amounts of particular member or servicing carrier rights or obligations for any or all policy years, in computing at any given time the balance due to any member from the Pool or to the Pool from any member, whether or not a servicing carrier, all accounts for that member shall be netted out, with only the net amount to be due either the member company or the Pool at that time.

**9. Distribution Upon Termination of the Pool.** Upon termination of the Pool, distribution by way of refund (if any) shall be made to the members of the Pool entitled to participate

therein, subject to provisions of Section 2 (g) of Article IV of this Plan of Operation, within such reasonable period of time as the Residual Market Committee in its sound discretion shall determine; and all provisions of this Plan of Operation and the Rules of Operation adopted hereunder relative to administration of the Pool shall remain in full force and effect until final distribution shall have been made.

#### ARTICLE XIV

##### OBLIGATION OF MEMBERS AFTER TERMINATION OF MEMBERSHIP

**Obligation of Members after Termination of Membership.** Any company whose membership in the Pool has been terminated by withdrawal or by expulsion shall, nevertheless, with respect to risks subject to the Plan of Operation prior to midnight of the effective date of such termination, continue to be governed by this Plan of Operation and Rules of Operation promulgated hereunder.

#### ARTICLE XV

##### DEFINITIONS

1. The term "net workers' compensation insurance premiums written," wherever used in this Plan of Operation, shall mean the gross direct premiums charged, less all premiums (except dividends and savings refunded under participating policies) returned to policyholders for all Workers' Compensation and Occupational Disease Insurance, exclusive of premiums for risks subject to this Plan of Operation, and for risks written under Special National Defense Comprehensive Rating or Special National Defense Premium Discount Plans and under excess policies; provided, however, that in the case of risks written or renewed on large deductible policies on or after January 1, 1994, or in effect on or after January 1, 1995, the net workers' compensation insurance premiums written shall be deemed to be an amount equal to standard premium plus any applicable All Risk Adjustments Program amounts. The term "net workers' compensation insurance premiums written" shall also include all premium received by non-admitted carriers on policies issued by such carriers for coverage in the state if such policies are deemed to meet employer obligations under the workers' compensation statute of the state.
2. The term "servicing carrier" wherever used in this Plan of Operation shall include any member company servicing coverage written by such member and subject to this Plan of Operation.
3. The term "voluntary direct assignment carrier" shall mean an insurer that has elected to receive direct assignments, in lieu of participating in the Pool, and that has obtained prior approval from the Commissioner of Insurance authorizing such form of participation.



## **APPENDIX TO THE MASSACHUSETTS ASSIGNED RISK POOL PLAN OF OPERATION**

### **MASSACHUSETTS WORKERS' COMPENSATION ASSIGNED RISK POOL PAID LOSS RATIO INCENTIVE PROGRAM**

The following incentive program for servicing carriers in Massachusetts has been developed based on paid loss ratio relativities. For each servicing carrier, paid loss ratio relativities will be calculated by policy year for Massachusetts assigned risks by dividing the servicing carriers' paid loss ratio (to written minus uncollectible premium) by the average paid loss ratio for all servicing carriers in the Massachusetts Pool.

#### **Program Applicability**

A servicing carrier with premium less than \$2.5 million in the Massachusetts Pool is not subject to any incentive or disincentive in this state. This is meant to reduce the administration cost in dealing with a relatively small servicing carrier.

This program will be effective beginning with policy year 1993. In other words, the first year of paid loss ratios evaluated will be policy year 1993.

#### **Calculation of Incentives and Disincentives**

There is an aggregate limit on incentives/disincentives of 9% of premium subject to the program. The formulas for calculating the incentives and disincentives are in Exhibit 1.

#### **Annual Evaluation of Paid Loss Ratios**

Each policy year will have five annual evaluations. The first evaluation will be at the completion of the policy year (policy year 1993 at 12/31/94, etc.). The final evaluation for policy year 1993 will be based on experience reported as of 12/31/98.

Incentives/disincentives will be calculated on an annual basis in accordance with the page entitled "Determining the Servicing Carrier Fee." To avoid the back and forth transfer of funds and to consider the fact that more immature data is less reliable, not all of the calculated incentive/disincentive will be dispensed/billed for preliminary adjustments. The portion of the incentive/disincentive dispensed will depend upon the evaluation number. See the chart below as an example for policy year 1993.

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<u>Evaluation Number</u>	<u>Date</u>	<u>Portion of Incentive/ Disincentive Dispensed</u>
1	December 31, 1994	20%
2	December 31, 1995	40%
3	December 31, 1996	60%
4	December 31, 1997	80%
5 (Final)	December 31, 1998	100%

Each evaluation for a policy year considers losses paid since the beginning of the policy year. Because of this, the incentive/disincentive calculated on a subsequent evaluation will net out any payments made or received from earlier evaluations.

### **Experience Used**

The experience data referred to is the assigned risk portion of business for servicing carriers. The data used for calculating incentives will be servicing carrier paid losses, written premium, and uncollectible premium as reported quarterly.

Written premium and paid losses for USL&H and Maritime will be excluded because these coverages are not written by all servicing carriers. This experience is not currently reported separately. Servicing carriers will be required to report it quarterly by policy year. Reporting forms and instructions are being developed and will be distributed to servicing carriers as soon as available.

Loss ratios will be calculated to written premium minus uncollectible premium. However, to the extent that Massachusetts Pool rules for a given policy year allow appeals, any uncollectible premium which the servicing carrier appeals to obtain servicing carrier allowance and wins, will be included.

### **Medical Cost Containment Expenses/Allocated Loss Adjustment Expense**

To the extent Massachusetts pool rules for a given policy year provide for reimbursements of servicing carriers for medical cost containment, allocated loss adjustment expenses, etc., reimbursed expenses will be added to paid losses to calculate the relativities. Since such expenses should serve to lower losses, the addition of any such reimbursed expenses should not adversely impact a servicing carrier. The average pool paid loss ratios would also be adjusted to include any such reimbursed expenses. The purpose of including reimbursed expenses would be to discourage servicing carriers from requesting reimbursement of costs which are not effective in reducing losses. The statewide average servicing carrier fee will be adjusted to the extent that any reimbursements are made for such expenses. [See items 1 and 2 on the page entitled "Determining the Servicing Carrier Fee."]

### **Capping of Losses**

In order to limit the impact of very large losses, paid losses will be capped at \$250,000 per claim/\$500,000 per occurrence. Losses will be capped at \$100,000 per claim/\$200,000 per occurrence for preliminary adjustments at the first and second evaluations.

For several reasons, the limit on large losses used in the calculation is lower for earlier evaluations of a policy year. Very large losses are not considered in earlier evaluations to avoid discouraging servicing carriers from making lump sum payments. Additionally, a very large paid loss could have a bigger impact on a servicing carrier's paid loss ratio when the policy year is immature.

Since cumulative paid loss amounts are not reported by claim, this would require servicing carriers to report losses which should be capped. The loss cap was selected large enough so that the administrative burden of reporting individual large paid loss amounts is not burdensome.

### **Carriers**

This program will be applied on a group basis. The definition of a group is to be found in the Pool Plan of Operation.

**FORMULA FOR CALCULATING INCENTIVES AND DISINCENTIVES**

Definition of Variables		
MR	=	Maximum Relativity Factor
mR	=	Minimum Relativity Factor
P	=	Carrier Written Premium Minus Uncollected Premium
SLR	=	State Average Paid Plus Case Loss Ratio
Carrier Rel	=	Carrier Paid Loss Relativity
	=	Carrier Paid Loss Ratio/State Average Paid Loss Ratio

**Disincentive**

If  $MR < \text{Carrier Rel}$ ,

$$= P \times SLR \times (\text{Carrier Rel} - MR)$$

**Incentive**

If  $mR > \text{Carrier Rel}$ ,

$$= P \times SLR \times (mR - \text{Carrier Rel})$$

Premium Size Group	Minimum Relativity Factor	Maximum Relativity Factor
Less than \$2.5m	None	None
\$2.5m - \$10m	.900	1.100
>\$10m - \$30m	.925	1.075
>\$30m - \$50m	.950	1.050
Over \$50m	.975	1.025

*Note: The maximum Incentive/Disincentive is capped at 9% of premium subject to this program.*

## **PERFORMANCE STANDARDS FOR SERVICING CARRIERS**

The following are the minimum performance standards for servicing carriers whether or not the carriers perform the services in-house or contract with outside service providers. The carrier is also responsible for complying with all statutes, regulations, and Pool rules and performance standards.

Failure to maintain these standards may result in penalties being imposed upon the servicing carrier by the Bureau in accordance with Article VII of the Pool's Plan of Operations.

For purposes of these standards, the day following the date of receipt, issuance, or other required action is counted as the first day.

### **A. UNDERWRITING AND AUDIT**

#### **1. POLICY ISSUANCE**

##### **a. General Information**

The carrier shall have operational responsibility for issuing policies accurately, utilizing forms prescribed by the Pool Administrator. All policies shall be issued in consideration of premiums and additional fees and charges as may be authorized by the Pool Administrator and approved by the Commonwealth.

The carrier is responsible for maintaining adequate safeguards to assure insurer compliance with all terms and conditions of the policy contract.

Proof of coverage (state filing) effective periods shall coincide with policy coverage periods.

The carrier shall include its telephone number either on the policy or on a stuffer to be included with the policy.

##### **b. New Business**

The policy will be accurately issued within 30 calendar days from the date the required premium and properly completed application is received from the Pool Administrator. All applicants shall be notified of the availability of the Waiver of Subrogation Endorsement within 30 calendar days of the Pool's receipt of applications.

If the application is not properly completed, the information shall be requested

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If the application is not properly completed, the information shall be requested from the producer/insured. If a question of eligibility arises, the carrier shall contact the office of the Pool Administrator.

**c. Renewals/Non-Renewals**

At least 45 days, but not more than 100 days prior to the expiration of the policy, the carrier shall send a renewal proposal as appropriate to the employer and the producer of record.

The policy will be issued within thirty (30) calendar days after the receipt of the required deposit premium.

If the policy is to be non-renewed, the servicing carrier shall give 10 days written notice to the employer and the Workers Compensation Rating and Inspection Bureau of Massachusetts of its intention not to renew.

**d. Reapplication**

When an employer, upon application to the Pool, is found to have had prior assigned risk coverage within the preceding 12 months, that employer shall be assigned back to the carrier which had provided that prior coverage. A carrier so assigned will receive a notice of prior coverage effective date and policy number, if available. This carrier shall verify the eligibility of the risk and initiate cancellation if the risk is found to be ineligible.

**2. PAYROLL AND CLASSIFICATION VERIFICATION**

- a.** The carrier shall verify through interim audit or comparable means when there is reason to doubt the accuracy of the annual exposure base or whether the insured has been properly classified.

If the servicing carrier has reason to believe that the risk is improperly classified, the carrier shall provide the Pool Administrator with sufficient information to make a determination.

- b.** The carrier shall consider the effects of inflation, economic trends in the insured's industry, employment level changes in the insured's operation, and utilize the latest available audit information to develop current policy premium and deposit premium.

**3. ENDORSEMENTS**

- a. When requested by the insured, endorsement will be issued within 30 calendar days after receipt of request.
- b. When it is determined, based on prior and current audit information, that an endorsement is necessary, the carrier must issue such endorsement within 45 calendar days of making the determination. The carrier must have procedures in place to compare final audit reports with renewal payrolls and other information to determine if any additional endorsements are necessary.

**4. CANCELLATIONS**

- a. Cancellations requested by insureds will be processed and Notice of Cancellation issued within five working days after receipt of request.
- b. Cancellation and notification procedures will be initiated by the carrier in accordance with M.G.L., Chapter 152, Sections 63 and 65B, if the insured fails to:
  - (1) Pay an undisputed outstanding premium obligation on a present or prior workers' compensation insurance policy. The former carrier, if different than the current carrier of record, shall notify the Pool Administrator of such undisputed outstanding premium obligation for the prior policy.
  - (2) Afford access to its operations for inspection and auditing purposes, after the carrier has made at least two good faith attempts to contact the insured, one of which has been by certified mail - return receipt requested.
  - (3) Demonstrate, in writing, that it has, within 90 calendar days, substantially complied, or intends to so comply within a reasonable time, with the carrier's reasonable recommendations aimed at reducing a substantial increase in the hazard insured against (i.e., those recommendations addressing exposures of imminent danger or directed towards preventing losses which are expected to increase substantially).
- c. A failure by an insured to comply with b.(1), b.(2), or b.(3) above shall be deemed reasons permitting the mid-term cancellation of a policy pursuant to M.G.L., Chapter 152, Section 55A.

**5. REINSTATEMENTS**

Request for reinstatement must be accepted or denied and communicated to the insured within five working days after receipt of request.

**6. CERTIFICATES OF INSURANCE**

Will be issued within five working days after receipt of request.

Should a policy described in a Certificate of Insurance be canceled before the expiration date of such policy, the issuing company will endeavor to give ten (10) days written notice to the certificateholder named in the Certificate.

**7. BILLINGS**

Additional and return premium adjustments will be mailed within ten (10) working days of recording on company records.

If additional premium adjustments are not received within 45 calendar days from date of mailing, cancellation procedures shall be implemented in accordance with the provisions of M.G.L., Chapter 152, Sections 55A, 63 and 65B.

Billing procedures, where all or a portion of the amount due is disputed, shall include prompt redetermination of the amount due and reasonable explanation of the basis for the billing, as necessary; as well as information on how the employer may appeal the billing determination.

Any return premium checks shall be made payable to the insured, unless a valid power of attorney is on file from the producer of record or a premium finance company; the check shall be made on the gross amount of the return premium and a bill for the unearned commission shall be sent to the producer of record or an offset may be made against other commissions due to the same producer from the carrier on other assigned risk business. The check shall be mailed to the payee.

**8. PRODUCER FEES**

The producer will be paid by the carrier as premium is collected. The carrier is required to process and mail fee payments within thirty (30) days from the date the policy is issued or thirty (30) days from the receipt of premium, whichever is later. The fee payment may also be applied to commissions which the producer owes to the carrier from other assigned risk policies.



**9. COLLECTION PROCEDURES**

Premium Past Due	Collection Activity
\$0 - \$249	Collections are important, but are at carrier discretion.
\$250 - \$9,999	<p>Carriers should complete billing procedures within 45 calendar days for balances due, installments, interim audits, endorsements, and final audits. During this 45-day period, at least two documented attempts to collect the premium due should be made. Billings, notifications of delinquent accounts, cancellation notices and telephone contacts are all considered attempts to collect. If undisputed premium remains unpaid, cancellation procedures should be initiated consistent with the Section A.4. Cancellations.</p> <p>Immediately upon completion of billing procedures for final audits, uncollected items should be referred to a collection agency, referred for commencement of legal action, or referred to a specialized in-house collection unit for further action, unless:</p> <p>(a) potential for imminent settlement is evident, or</p> <p>(b) the premium is in dispute and the dispute is being actively resolved.</p>
\$10,000 & Over	Use the same procedures as for \$250 - \$9,999; however, if the insured disagrees with the amount due, or the amount due is \$50,000 or more, referrals to a collection agency, attorney, or specialized in-house collection unit requires approval of the National Council on Compensation Insurance or other organization designated for this purpose by the Pool Administrator or the Division of Insurance.

**10. AUDITS**

- a. Audits will be completed, billed and recorded on the company records within 90 calendar days of policy expiration.
- b. Audits will be completed, billed and recorded on the company records within 90 calendar days of the effective date of cancellation if initiated by the company and within 90 calendar days of notification of cancellation if initiated by the insured.
- c. If an insured disputes an audit, the carrier should contact the insured and resolve the accuracy of the audit within 60 days from the date of receipt of written notice of the dispute. The dispute should be concluded either by revising the audit billing, or by written notice to the insured that the original audit is accurate.
- d. Physical audits will be made whenever requested by the policyholder with reasonable grounds.
- e. Physical audits are to be conducted in accordance with the following

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minimum frequencies for all risks except domestic servants. All preliminary physical audits must be completed within 120 calendar days\* of the policy effective date.

1) New Policies:

- (i) Premium range \$50,000 and over: A preliminary physical audit and a final physical audit must be completed on all risks regardless of governing class code.
- (ii) \$49,999 to \$10,000: A preliminary physical audit and a final physical audit must be completed on all risks with the following special category governing class codes. All other risks must receive a final physical audit.

<u>Special Category</u>	<u>Applicable Class Codes</u>
Amusements	9016
Auto Sales/Service	8380, 8393
Construction/Carpentry/Masonry	All Classes
Farm Related	0016, 0036, 0037, 0050
Food Service/Restaurant	9079
Fuel Related/Oil/Gas/Energy	All Classes
Health Care	8829
Janitorial	All Classes
Landscaping	0042
Lumbering	All Classes
Millwright Work	3724
Salesperson-Outside	8742,8745
Security Services	All Classes
Sheetmetal Work	5538
Stores - Wholesale	8018
Trucking	All Classes

- (iii) \$9,999 to \$5,000: A preliminary physical audit and a final physical audit must be completed on all risks with the following special category governing class codes: All other risks must receive a final physical audit.

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\*Commonwealth of Massachusetts Regulation 211 CMR 111.00 requires that carriers audit policies issued to employee leasing companies within 90 days of the policy effective date.

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<u>Special Category</u>	<u>Applicable Class Codes</u>
Carpentry, Detached Dwellings	5645
Carpentry, Installation of Cabinet Work	5437
Carpentry, 3 stories or less	5651
Carpentry NOC	5403
Concrete or Cement Work	5221
Concrete Construction	5213
Contractor-Executive Supervisor	5606
Insulation Work	5479
Masonry NOC	5022
Painting or Paperhanging	5474
Plumbing	5183
Roofing	5545/5547
Sheet Metal Work	5538
Trucking NOC	7219
Wallboard Installation	5445

(iv) \$4,999 to \$1: A final physical audit must be completed on all risks with a construction, carpentry, masonry or trucking governing class code. A final mail or telephone audit must be completed for all other risks.

(v) All premium ranges: A preliminary physical audit and a final physical audit must be completed on all risks engaged in leasing employees to others.

2) **Renewal Policies:**

- (i) Premium \$10,000 and over: A final physical audit must be completed on all risks.
- (ii) \$9,999 to \$1: A final physical audit must be completed at least once every three years for all risks. A final mail or telephone audit must be completed on all risks which are not receiving a physical audit
- (iii) All premium ranges: A final physical audit must be completed on all risks engaged in leasing employees to others.

- f. Mail or telephone audit reports by the insured are permitted only where a physical audit is not required. Adequate documentation must be maintained in file.
- g. The servicing carrier shall initiate a diligent effort to obtain the most recent IRS 940 form or its equivalent from the insured on all mail and telephone audits to assess payroll. Adequate documentation shall be maintained in file.

**B. CLAIMS**

**1. Registering/Recording:**

- a. All First Reports of Injury will be screened upon receipt and separated by lost-time and medical-only claims. All First Reports of Injury should be stamped with the date received.
- b. All claims for medical or indemnity benefits reported by telephone, facsimile, mail or any other means should be established with a claim number and assigned to a file handler within 24 hours of the date received, with the assignment date documented.

**2. Investigation:**

- a. All lost-time accidents should be investigated at least to the extent of contacting the claimant, the person to whom the claimant or survivor reported the injury or the person held responsible by the employer for confirming the facts of the injury, and the treating physician. Investigations should be conducted based on the severity of injury, potential extent of disability, questions of compensability, jurisdiction, medical causal relationship issues, including but not limited to, fatal injuries and employer liability actions. Investigations should include signed or recorded statements from the employer, employee, and witnesses, if available and where appropriate.

Specific examples of when detailed statements should be taken are as follows:

**Fatalities**

- Spinal Cord Injuries
- Paralysis Cases
- Head Injury/Brain Damage Cases
- Psychological Stress Cases
- Burns and Severe Disfigurement Cases
- Heart Attack Claims
- Carpal Tunnel Syndrome Cases
- Occupational Disease Claims
- Hernia Cases
- Temporomandibular Joint Disorder Claims
- Claims with Delayed Disability and Additional  
Periods of Disability, to Investigate an  
Intervening Accident

In addition, detailed statements should be taken on claims for back and neck injuries and on unwitnessed or late reported injuries where appropriate.

- b. Contact, or documented attempts of contact, with the injured worker or representative in cases involving serious injury shall be made within one working day of receipt of assignment.
- c. Initial investigation of assigned claims should be completed within the 14 day statutory requirement, or if paid without prejudice, no more than 60 days.
- d. Investigation will also include, but not be limited to, the following:
  - 1) Contact with the employer/supervisor, and any witnesses as needed, within two business days of receipt of assignment, to verify accident details and to lay the foundation for the injured worker's return to light or full duty.
  - 2) Where the employee has not returned to work, contact with the treating physician within two business days of receipt of assignment in the absence of medical documentation from the onset to gather information concerning medical history, diagnosis, treatment, causal relationship, and return to work target date.
  - 3) Verification of average weekly wage consistent with jurisdictional requirements.

- 4) Report all lost-time injury claims to the Index Bureau. Investigation should include Inquiry Reports with other insurers/administrators, when appropriate.

Either a full captioned report to the file should be completed with the conclusion of investigation, or the carrier must maintain an automated system which includes as data elements all the items relevant to the investigation. Such terms shall include but not be limited to coverage, jurisdiction, claim date, accident description, compensability, disability, medical history, subrogation, Second Injury Fund potential, potential employer's liability exposure, reserves, and outstanding issues as well as plans for future handling.

- 5) On extended disability claims where there are questions about the extent or duration of disability, claimants should be contacted as often as appropriate, but at least quarterly to determine their medical and return-to-work status.
- 6) A subrogation investigation shall be conducted simultaneously with the compensability investigation, including statements, photographs, diagrams, engineering opinions and preservation of evidence to support a recovery, where appropriate.

Each file should contain a documented determination as to the appropriateness of subrogation, based on this investigation. Insureds should have access to this information at any time upon request. In addition, in any case of an injury resulting from a motor vehicle accident involving a third party, if subrogation is not pursued, a letter explaining the reasons for the insurer's non-pursuit should be provided to the employer within nine months of the incident.

- e. Continuing items of investigation and/or development (which should be addressed in the file)
  - 1) Consideration of Second Injury Fund possibilities.
  - 2) Possibility of apportionment or contribution.
  - 3) Social Security or other applicable offsets.
  - 4) Need for physical or vocational rehabilitation.

- 5) Where there is a question of disability, fraud, or where otherwise appropriate, activity checks/surveillances should be conducted by the servicing carrier or its representative at least every six months. Claims where widow's or dependent benefits are being paid should receive activity checks/surveillances at least annually.

3. Acceptance or Denial:

- a. If claim is compensable, issue first payment within fourteen days of servicing carrier's receipt of an employer's first Report of Injury, or an initial written claim for weekly benefits on a form prescribed by the department, whichever is received first, and in accordance with statutory requirements.
- b. If denial of compensability is in order, ensure that prompt and legally sufficient denial is made with clear, factual basis and grounds for denial to the proper parties, followed up with timely administrative filings, where required, consistent with vigorous defense for non-meritorious claims.

4. Reserving:

- a. Establish initial medical and indemnity loss reserves within five working days of assignment to the file handler commensurate with all known factors. Adequate reserves represent the file handler's judgment of the potential costs involved in achieving maximum medical improvement and a return to work on full duty based upon known information and claims judgment.
- b. Revise loss reserves whenever developments occur that change the ultimate claim exposure. Document with reserve worksheets, or other appropriate means, the basis for reserve changes.
- c. In reporting estimates on fatal and permanent total cases, utilize authorized tables.
- d. Reserve estimates should be reviewed by a supervisor to examine for reserve propriety at 90 day intervals, including if there are no new developments or changing claim conditions.

5. Disability Management:

- a. Arrange for the best medical care necessary to treat and cure the injury or illness.

b. Dependent upon the case circumstances, the nature of the injury, and the extent of the disability, all consistent with sound claims practice and law, initiate, determine, and/or implement the following:

- 1) Promote a team approach to limiting disability through continuing follow-up contact with injured worker, employer, and physician at intervals consistent with the injury and estimated length of disability and establishment of return-to-work target dates.

Make a good faith attempt to provide the treating physician with a complete job description to facilitate an objective evaluation of the injured worker's ability to return to the job. When necessary, provide a videotape of the job.

- 2) Independent medical examinations (where allowed by law) should be utilized where questions of disability, causal relationship, need for surgery and/or existing treatment, or where reports of treating physician are not forthcoming.
- 3) If return to regular job with the insured does not appear medically feasible or is unavailable, explore the availability or return to other employment, modified or light work duties consistent with medical restrictions.
- 4) Provide Vocational rehabilitation in the form of alternative work, modified work, job placement, on-the-job training, schooling, ensuring strict compliance with statutory and/or regulatory provisions.



6. Medical Care and Cost Control:

- a. An integrated medical management program that includes pre-accident medical care arrangements, timely reporting of accidents, PPO/PPN/HMO/and similar contracts, utilization review as required by the DIA regulations in effect, hospital pre-certification/pre-admission review, return-to-work programs and catastrophic case management shall be developed and applied to individual claims, consistent with the severity of injury.
- b. Periodic reports must be obtained from the treating physician and/or other medical practitioners for the status of the worker's injury and for use in conjunction with medical bill screening.
- c. Screen all medical bills to ensure treatment is related to the injury, and charges are reasonable and necessary; utilizing fee schedules, relative value studies and/or professional medical cost surveys.
- d. Where no questions of compensability or reasonableness exist and physician reports have been received, pay all bills within 30 calendar days or earlier.
- e. Where questions of compensability or reasonableness exists, notify the medical vendor within 30 calendar days, explaining the reasons for the need for further information or investigation.

7. Hearings and Settlements:

- a. Ensure that all cases are properly prepared prior to conciliation, conference, hearing, trial, or arbitration, including but not limited to the following:
  - 1) Documentation of complete pre-trial preparation in the areas at issue, such as coverage, liability and medical, including proper instructions and authorization of the insurer representative at conciliation.
  - 2) Have available all necessary lay and professional witnesses or their depositions prior to formal hearing, trial, or arbitration.

- 3) If proceeding encompasses issues relative to extent of disability and/or permanent impairment, the appropriate medical reports, opinions, witnesses should be made available and ready for testimony or deposition, in accordance with statutory requirements.
  - 4) If the proceeding is to be handled by an attorney, ensure timely delivery of the file material for preparation. Document attorney's receipt of claim file and the insurer's communications to its attorney regarding the merits of the issues to be litigated and the probable success of the litigation. If an adverse finding is made, the attorney should comment about the costs and the merits of the appeal and case law issues, including the potential impact on future claims costs.
  - 5) Review attorney bills to ensure that they reflect billing practices and expense controls that are consistent with the attorney/carrier agreement.
  - 6) When outside counsel is utilized by the carrier, the defense attorney's Initial Report should be produced within 30 days of receipt of assignment. A Pre-Trial Report should be produced by any outside defense counsel at least 30 days prior to a hearing or, if such counsel receives less than 40 days notice of a hearing, no later than ten days from receipt of such notice. In all instances, Initial Reports and Pre-Trial Reports shall be completed prior to the applicable proceedings.
- b. Assuming plaintiff attorney willingness and consistent with sound claims judgment, conduct settlement negotiations promptly after completion of investigation. Do not, as a matter of tactics or standard operating procedure, wait until day of pre-trial, conference or hearing. Prior to settlement negotiations the file will be documented relative to estimated settlement value.
  - c. Base all settlements of permanency or compromise settlements on sound claims judgment consistent with compensability investigation, medical evidence developed and exposure, in accordance with the law and benefit structure.
8. Payment Control:

All benefit payments and filings required to be made to the DIA will be documented and made timely in accordance with statutory provisions and

regulations.

9. Supervision:

Document supervisor/management direction and control of claim handling consistent with the injury severity.

10. Filing Reporting:

All file activity will be fully documented either by paper or electronically, and shall include:

- a. Sources of information and dates of activity.
- b. Copies of police reports, marriage and/or birth certificates, etc., when appropriate.

**C. LOSS CONTROL**

The primary objective of these standards is to eliminate, reduce and/or control sources of occupational injury and illness to employers' workers.

1. Notification of Loss Control Services:

The policyholder and producer will be notified by the carrier, in writing, within 30 calendar days of receipt of assignment, of available loss control services and safety information, including instructions for obtaining services and information.

2. Loss Control Consulting Surveys:

The carrier will provide the following:

- a. A minimum of one consulting survey annually for each single location policyholder with estimated annual premium greater than \$25,000.
- b. A minimum of one consulting survey annually for each single location policyholder with estimated annual premium between \$10,000 and \$25,000, and Best's Loss Control Rating of 7 or greater.
- c. For any policyholder meeting the criteria in C.2.a. and C.2.b. above, with multiple locations, the carrier will conduct a minimum of one consulting survey annually at the following locations:

- 1) Each location meeting the criteria in C.2.a. and C.2.b.;
  - 2) If the total annual premium in Massachusetts meets the criteria in C.2.a. and C.2.b., but no single location of the insured meets these criteria, survey the principal location of the policyholder as determined by the servicing carrier.
- d. For any policyholder not meeting the criteria in C.2.a and C.2.b., the carrier will conduct a consulting survey if the carrier deems it necessary, taking into consideration; location exposures, claim activity, nature of business, Best's Loss Control Rating, incident rate, request of the insured, and the like.
  - e. Within 60 calendar days of receipt of the notice of assignment of new business, the carrier will contact each policyholder who qualifies under C.2.a. and C.2.b., above, to schedule a consulting survey.
  - f. For the purpose of this section, a consulting survey will consist of an actual visit to the policyholder's site, identification of potential hazards, discussion and closing conference with the designated safety contact and a report documenting the activity with risk reduction recommendations, if any.
3. Consultation:

In addition to C.2. above, each assigned risk policyholder may request loss control services from the servicing carrier regardless of its size of operations. The carrier is responsible for allocating financial resources, qualified personnel, and time in amounts sufficient to provide comprehensive loss control services to its policyholders.

- a. The carrier will provide appropriate consultation in the form of accident prevention programs, accident trending, safety seminars, safety literature and other administrative aids which will support the loss control efforts of the policyholder.
- b. The carrier will encourage the policyholder to designate a specific individual(s) as safety coordinator and contact person.
- c. The carrier will assign a designated loss control supervisor to oversee the delivery of services to the policyholder.
- d. When the policyholder requests loss control assistance, the carrier will respond within 30 calendar days. In the event such response includes an on-site survey, this survey will be completed within an additional 45

calendar days. Requests for assistance in the evaluation and control of imminent danger exposures will be given high priority.

4. Loss Control Services:

Loss control services include, but are not limited to:

- a. Review of the past accident experience to determine causes and trends and presentation of this analysis to policyholder management, highlighting areas requiring attention;
- b. On-site review, documentation and presentation to the policyholder of potential exposures;
- c. Review and documentation of policyholder loss control program and activities including, employee training programs, safety representation (organization), safety policy, procedures, goals and funding, etc.;
- d. Written recommendations for policyholder control of actual or potential exposures and, where applicable, program activities or management principles;
- e. Safety training seminars designed to familiarize management and supervisory personnel with applicable loss control techniques;
- f. Description of operations and loss potentials for classification and underwriting purposes; and
- g. The status, in writing, of recommendations submitted on all prior surveys.

5. Recommendations:

In the event the on-site survey of the policyholder's operation reveals the need for loss control measures to correct observed safety exposures, written recommendations will be sent to the policyholder's safety contact and producer within 30 calendar days of completion of the survey. All observed imminent danger hazards will be addressed immediately by the loss control representative. These hazards will be discussed with policyholder management during the survey exit interview. Written confirmation of their existence and recommended corrective action will be sent to the policyholder within 14 calendar days.

6. Loss Records:

Loss records will be maintained and made available by the carrier to allow for

analysis of accident causes and to assist the policyholder to identify accident trends.

**7. Customer Service:**

The carrier shall establish written customer service standards that include, but are not limited to, prompt response to producer or policyholder inquiries and complaints, and written internal procedures and management accountabilities for monitoring compliance with those standards.

In the event of such an inquiry or complaint, the servicing carrier shall notify the policyholder that pursuant to the Pool's Plan of Operation, the insured may appeal to the Residual Market Committee, if the insured is dissatisfied with the results of the servicing carrier's application of its customer service standards.

**8. Accounting/Statistical and Results Reporting:**

Carriers must:

- a. Collect and store data required to carry out all necessary accounting, Statistical Plan and results reporting requirements.
- b. Demonstrate that the carrier has allocated financial resources, qualified personnel and time in amounts sufficient to provide comprehensive loss control services to its policyholders.
- c. Prepare and file accurate reports within the time constraints required by the Pool.
- d. File all data in the format and detail specified by the Pool.

Massachusetts Assigned Risk Pool Plan of Operation

ON-SITE AUDIT AGGREGATE RATING TABLE

FINANCIAL REPORTING

	<u>Weight</u> <u>Factor</u>	(A) X (B) = (C) <u>Rating</u> <u>Value</u> <u>Rating</u>
Accurate Reporting of Policy Information	4	S = 3
		M = 2
Accurate Reporting of Claim Information	4	U = 1
Financial Reporting Systems and Procedures	4	
Accurate Premium Calculation	3	
Accurate Calculation and Reporting of Producer Fees	3	
Proper Coding and Reporting of Losses and Expenses	3	
Timely Reporting of Uncollectibles	2	
Accurate Reporting of Uncollectibles	2	
Accurate Reporting of Outstanding Loss Information	2	
Accurate Reporting of Recoveries	2	
Claims Processing Controls	2	
Premium Processing Controls	2	
Proper Application of Producer Fee and Servicing Carrier Allowance Percentages	2	
<b>Totals</b>	<b>35</b>	

**ON-SITE AUDIT AGGREGATE RATING TABLE**  
**UNDERWRITING & AUDIT PERFORMANCE STANDARDS**

	(A) <u>Weight</u> <u>Factor</u>	X	(B) <u>Rating</u> <u>Value</u>	=	(C) <u>Rating</u>
Additional Premium Endorsements	4		C = 4		
Compliance with Audit Frequency Requirements	4		S = 3 M = 2		
Proper Application of Experience Modifications	4		U = 1		
Completion and Billing of Final Audits	4				
Compliance with Established Collection Procedures	3				
Issuance of Renewal Quotes	3				
Policy Issuance	3				
Processing of Requested Endorsements and Processing of Cancellations	3				
Proper Application of Required State Endorsements	2				
<b>Totals</b>	<b>30</b>				



Massachusetts Assigned Risk Pool Plan of Operation

ON-SITE AUDIT AGGREGATE RATING TABLE LOSS CONTROL PERFORMANCE STANDARDS

	<u>Weight Factor</u>	<u>Rating Value</u>
Loss Control Consulting Surveys:	4	C=4
Loss Control Services and Recommendations:	4	S=3
Accounting/Statistical and Results Reporting	3	M=2
Customer Service:	2	U=1
Loss Records:	2	
Notification of Loss Control Services:	2	
Total	17	

ON-SITE AUDIT AGGREGATE RATING TABLE CLAIM PERFORMANCE STANDARDS

	<u>Weight Factor</u>	<u>Rating Value</u>
Investigation:	4	C=4
Disability Control:	4	S=3
Medical Costs Control:	4	M=2
Reserving:	4	U=1
Acceptance/Denial:	3	
Hearings:	3	
Settlements:	2	
Supervision/File Reporting:	2	
Claim Recording:	1	
Total	27	

**ON-SITE AUDIT RATING**

**Formula**

**A = Weight Factor**

**B = Rating Value**

**A x B = Individual points earned per area**

**C = A x B = Aggregate Rating**

**Rating Value Definition**

**C = 4 = Commendable**

**S = 3 = Satisfactory**

**M = 2 = Marginal**

**U = 1 = Unsatisfactory**

### Determining the Servicing Carrier Fee

1. For policy year 1993, the starting servicing carrier fee will be 30%. An off-balance factor must be applied to obtain an overall premium weighted servicing carrier fee equal to 27% minus the ratio of reimbursements received by all servicing carriers for expenses (e.g. medical cost containment, allocated loss adjustment expenses, etc.) to the total pool premium. This off-balance procedure will be implemented at each adjustment to the servicing carrier fee.

2. For policy year 1994, the initial servicing carrier fee will be 24%. An off-balance factor must be applied to obtain an overall premium weighted servicing carrier fee equal to 24% minus the ratio of reimbursements received by all servicing carriers for expenses (e.g. medical cost containment, allocated loss adjustment expenses, etc.) to the total pool premium.

3. The paid loss ratio incentive program will provide a  $\pm 9\%$  swing. Servicing carriers' minimum and maximum relativity factors under the paid loss ratio incentive program are as follows:

<u>Premium Size Group</u>	<u>Minimum Relativity Factor</u>	<u>Maximum Relativity Factor</u>
Less than \$2.5 mil.	None	None
\$2.5 mil. - \$10 mil.	.900	1.100
>\$10 mil. - \$30 mil.	.925	1.075
>\$30 mil. - \$50 mil.	.950	1.050
Over \$50 mil.	.975	1.025

4. The performance standards program has been devised to provide a swing on each of the four on-site audit aggregate rating categories: underwriting and audit, loss control performance standards, claim performance standards, and financial reporting. The total swing from performance standards would be +2% to -14%.

5. For policy years 1993 and 1994, the servicing carrier fee is subject to an overall minimum of 15% and an overall maximum of 35%.

6. There will be annual on-site audits of all servicing entities by a firm designated by the Division of Insurance.

7. The performance based servicing carrier fee in its entirety is effective as of 1/1/94. In calendar year 1994 the auditing process will be implemented. When the auditing process is completed for all servicing carriers, servicing carrier fees will be adjusted based on the results of the performance evaluations subject to items 1 and 2 above. Subsequent adjustments will be made based on the results of the paid loss incentive program. For policy year 1993 the servicing carrier fee is subject only to the Paid Loss Incentive Program and the overall balancing and capping constraints discussed above.

8. For the purpose of determining the service carrier fees under this program, percentages are of standard premium, i.e., not including ARAP surcharges or MARRP adjustments.

## Massachusetts Assigned Risk Pool Plan of Operation

## Effect of Performance Standards on Servicing Carrier Fee

Effect on Servicing Carrier Fee	Score on Audit of Underwriting and Audit Performance Standards	Effect on Servicing Carrier Fee	Score on Audit of Financial Reporting Performance Standards
0.0%	90 - 120	0.0%	96 - 106
-0.5%	85 - 89	-0.5%	93 - 95
-1.0%	80 - 84	-1.0%	82 - 92
-1.5%	75 - 79	-1.5%	70 - 81
-2.0%	70 - 74	-2.0%	35 - 69
-2.5%	65 - 69		
-3.0%	60 - 64		
-3.5%	45 - 59		
-4.0%	30 - 44		

Total weight of subcategories is 30.

Total weight of subcategories is 35.

Effect on Servicing Carrier Fee	Score on Audit of Claims Performance Standards	Effect on Servicing Carrier Fee	Score on Audit of Loss Control Performance Standards
1.0%	102 - 108	1.0%	65 - 68
0.5%	95 - 101	0.5%	60 - 64
0.0%	81 - 94	0.0%	51 - 59
-0.5%	77 - 80	-0.5%	48 - 50
-1.0%	73 - 76	-1.0%	44 - 47
-1.5%	69 - 72	-1.5%	41 - 43
-2.0%	66 - 68	-2.0%	37 - 40
-2.5%	62 - 65	-2.5%	34 - 36
-3.0%	58 - 61	-3.0%	17 - 33
-3.5%	54 - 57		
-4.0%	45 - 53		
-4.5%	36 - 44		
-5.0%	27 - 35		

Total weight of subcategories is 27.

Total weight of subcategories is 17.