

211 CMR: DIVISION OF INSURANCE

211 CMR 134.00: SAFE DRIVER INSURANCE AND MERIT RATING PLANS

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134.01: Purpose, Scope and Responsibility

(1) Purpose and Scope. All Insurers issuing Private Passenger Motor Vehicle insurance Policies shall comply with 211 CMR 134.00. The purpose of 211 CMR 134.00 is to define the surcharges and credits that apply in the Safe Driver Insurance Plan required during Fixed-and-established Markets, and to provide for the continuous, timely, accurate and uniform collection and exchange of Private Passenger Motor Vehicle insurance claim and traffic law violation data during Fixed-and-established and Competitive Markets to facilitate the operation of the SDIP or Insurer Merit Rating Plans.

(2) Responsibilities of the Merit Rating Board. The Merit Rating Board shall collect and report Private Passenger Motor Vehicle insurance claim and traffic law violation data and respond to insurance company requests for such information.

134.02: Definitions

As used in 211 CMR 134.00, the following words shall mean:

At-fault Accident. An accident involving a vehicle subject to 211 CMR 134.00 wherein the Involved Operator was more than 50% at fault, as determined by the application of the Standards of Fault of the Board of Appeal, and that:

- (a) For accidents occurring before July 1, 2015, results in a claim payment made by an Insurer, exclusive of any deductible, exceeding \$500.
- (b) For accidents occurring on or after July 1, 2015, results in a claim payment made by an Insurer, exclusive of any deductible, exceeding \$1,000.

Board of Appeal. The Board of Appeal on Motor Vehicle Liability Policies and Bonds established pursuant to M.G.L. c. 26, § 8A.

Bodily Injury Liability Coverage. The insurance coverage designated as such in a Massachusetts Private Passenger Motor Vehicle insurance Policy.

Collision Coverage. The insurance coverage designated as such in a Massachusetts Private Passenger Motor Vehicle insurance Policy.

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

Competitive Market. A market in which Private Passenger Motor Vehicle insurance rates are not fixed and established pursuant to M.G.L. c. 175, § 113B.

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Comprehensive Coverage. The insurance coverage designated as such in a Massachusetts Private Passenger Motor Vehicle insurance Policy.

Coverage Selections Page. The coverage selections page of a Massachusetts Private Passenger Motor Vehicle insurance Policy, or a replacement Coverage Selections Page.

Credit Code. The code representing the number of consecutive Incident-free Years within the Incident-free Period applicable to any operator as approved by the Commissioner in the Statistical Plan.

Credit Points. Except as otherwise provided by 211 CMR 134.00, one Credit Point is earned by an operator with a valid driver's license for each Incident-free Year within the Policy Experience Period.

Designated Statistical Agent. The rating organization or other agency designated by the Commissioner as the statistical agent for the Division of Insurance pursuant to M.G.L. c. 175A, § 15(a).

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

Excellent Driver Discount. The percentage value assigned by the Commissioner at the time Private Passenger Motor Vehicle insurance rates are fixed-and-established pursuant to M.G.L. c. 175, § 113B reflecting the lower expected loss experience of operators with Incident-free Periods of more than five and less than six years, which may vary according to the affected liability coverages and Collision Coverage, irrespective of the class and territory of the Policy.

Excellent Driver Discount Plus. The percentage value assigned by the Commissioner at the time Private Passenger Motor Vehicle insurance rates are fixed-and-established pursuant to M.G.L. c. 175, § 113B reflecting the lower expected loss experience of operators with Incident-free Periods of at least six years, which may vary according to the affected liability coverages and Collision Coverage, irrespective of the class and territory of the Policy.

Fixed-and-established Market. A market in which premiums for Private Passenger Motor Vehicle insurance are based on rates fixed-and-established by the Commissioner pursuant to M.G.L. c. 175, § 113B, following a hearing and decision pursuant to M.G.L. c. 175E, § 5 finding that competition in the Private Passenger Motor Vehicle insurance market is, with respect to any territory or to any kind, subdivision or class of insurance, either insufficient to assure that rates would not be excessive, or so conducted as to be destructive of competition or detrimental to the solvency of Insurers.

Incident-free Period. The number of consecutive Incident-free Years immediately preceding the Policy Effective Date and within the Policy Experience Period of the Policy for which an operator with a valid driver's license had no Surchargeable Incidents.

Incident-free Year. Any of the series of one-year periods immediately preceding the Policy Effective Date and within the Policy Experience Period of the Policy for which the licensed operator had no Surchargeable Incidents.

Insurer. Any corporation, association, partnership, group or individual engaged as a principal authorized to write Private Passenger Motor Vehicle insurance in the Commonwealth.

Involved Operator. Any person determined to have been operating a motor vehicle subject to 211 CMR 134.00 at the time of, and involved in, an accident subject to 211 CMR 134.00, or any person having a traffic law violation subject to 211 CMR 134.00, as specified by 211 CMR 134.03.

Limited Collision Coverage. The insurance coverage designated as such in a Massachusetts Private Passenger Motor Vehicle insurance Policy.

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Listed Operator. The Policyholder and any person listed on the new or renewal application for the Policy covering one or more vehicles subject to 211 CMR 134.00.

Merit Rating Board (MRB). The Motor Vehicle Insurance Merit Rating Board established pursuant to M.G.L. c. 6A, § 57A.

Merit Rating Information. Motor vehicle insurance claim and traffic law violation information provided to an Insurer by the Merit Rating Board that will be used by Insurers in the application of the Insurer's Merit Rating Plan that Insurers may submit pursuant to M.G.L. c. 175E during Competitive Markets.

Merit Rating Plan. A rating procedure used for calculating Private Passenger Motor Vehicle insurance premiums by Insurers in a Competitive Market that utilizes past motor vehicle insurance claim and traffic law violation experience of the operators insured under a Policy to forecast future losses by measuring their loss experience against the loss experience of operators in the same classification to produce a prospective premium.

MRB Manual(s). The Manual(s) prepared by the Merit Rating Board in accordance with 211 CMR 134.15.

Notice of At-fault Accident Determination. The notice of an At-fault Accident provided by the Insurer to the Merit Rating Board, the Involved Operator and/or the Policyholder during a Competitive Market.

Operator Information. The driver's license number, license state, name and date of birth as they appear on the driver's license of the Policyholder and of all Listed Operators on a Massachusetts Private Passenger Motor Vehicle insurance Policy.

Personal Injury Protection Coverage. The insurance coverage designated as such in a Massachusetts Private Passenger Motor Vehicle insurance Policy.

Policy. For the policy year and each year thereafter, any motor vehicle liability Policy as defined in M.G.L. c. 90, § 34A applicable to Private Passenger Motor Vehicles; including any Massachusetts motor vehicle insurance Policy written in accordance with a Private Passenger Motor Vehicle insurance manual.

Policy Effective Date. The date on which the Massachusetts Private Passenger Motor Vehicle insurance Policy takes effect.

Policy Experience Period. The six year period immediately preceding the effective date of the Policy.

Policy Number. A unique number, up to 16 characters long, that does not change throughout the life of the Policy.

Policyholder. The principal named insured(s) on a Policy.

Private Passenger Motor Vehicle. Any vehicle, except motorized vehicles not normally driven on public ways, that is subject to rating in accordance with a Private Passenger Motor Vehicle insurance manual, regardless of whether a Competitive Market or a Fixed-and-established Market is in place.

Property Damage Liability Coverage. The insurance coverage designated as such in a Massachusetts Private Passenger Motor Vehicle insurance Policy, also known as "Damage to Someone Else's Property."

Safe Driver Insurance Plan or SDIP. The adjustment of insurance rates and premiums during Fixed-and-established Markets for Private Passenger Motor Vehicles subject to 211 CMR 134.00 on the basis of motor vehicle insurance claims arising from At-fault Accidents, traffic law violations and Comprehensive Coverage claims.

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Safe Driver Insurance Plan (SDIP) Statement. For Policies subject to the Safe Driver Insurance Plan during Fixed-and-established Markets, the notification from an Insurer to a Policyholder with one or more vehicles not assigned the Excellent Driver Discount Plus (best credit) for Property Damage Liability Coverage, mandatory Bodily Injury Liability Coverage, Personal Injury Protection Coverage, or Collision Coverage.

SDIP Information. Information provided to an Insurer by the Merit Rating Board which is the basis upon which Private Passenger Motor Vehicle insurance premium adjustments that are required to be made under the Safe Driver Insurance Plan during Fixed-and-established Markets including, but not necessarily limited to, Surchargeable Incidents (and the Surcharge Points applicable thereto), number of Incident-free Years or Credit Points and driver's license status.

Statistical Plan. The Massachusetts automobile statistical plan promulgated by the Commissioner pursuant to the authority granted under M.G.L. c. 175A, § 15(a).

Surchargeable Incident. An At-fault Accident, traffic law violation, or Comprehensive Coverage claim, which may result in an increase in the Policyholder's premium during Fixed-and-established Markets.

Surcharge Date. The date of notice entered by an Insurer on the Surcharge Notice required by 211 CMR 134.04, the date of payment on the Comprehensive Coverage claim notice required by 211 CMR 134.05, the disposition date entered by a court on the citation for a traffic law violation, or the date the payment of the fine assessed for civil motor vehicle infractions is received by the Registry of Motor Vehicles.

Surcharge Notice. The notice of an At-fault Accident provided by the Insurer to the Merit Rating Board, the Involved Operator and/or the Policyholder during a Fixed-and-established Market.

Surcharge Percentage. The percentage value assigned by the Commissioner when Private Passenger Motor Vehicle insurance rates are fixed and established pursuant to M.G.L. c. 175, § 113B to be applied to the total number of Surcharge Points for each Surchargeable Incident during the Policy Experience Period, which may vary according to the affected liability coverages and Collision Coverage, irrespective of the class and territory of the Policy.

Surcharge Points. The point values assigned by the Commissioner for each Surchargeable Incident set forth in 211 CMR 134.13.

All other items in 211 CMR 134.00 shall be construed as defined in M.G.L. c. 90, §§ 34A and 34O, M.G.L. c. 175 and M.G.L. c. 175A, or, if not defined in these chapters, in accordance with common usage.

134.03: Relevant Vehicles, Policies, Accidents, Traffic Law Violations and Claims

The provisions of 211 CMR 134.03 shall apply in both Fixed-and-established and Competitive Markets.

- (1) Vehicles. Any Private Passenger Motor Vehicle that is rated in accordance with a Private Passenger Motor Vehicle insurance manual shall be a vehicle subject to 211 CMR 134.00.
- (2) Policies. Any Policy meeting the definition in 211 CMR 134.02 that provides the mandatory liability coverages (Property Damage Liability Coverage, Bodily Injury to Others Coverage, Personal Injury Protection Coverage) and/or Collision Coverage for one or more vehicles subject to 211 CMR 134.00 shall be a Policy subject to 211 CMR 134.00.
- (3) Accidents. Any At-fault Accident shall be an accident subject to 211 CMR 134.00 if it:
 - (a) occurs before July 1, 2015 and results in a Collision, Limited Collision, or Property Damage Liability claim payment of more than \$500 in excess of any applicable deductible for damage to or caused by a vehicle subject to 211 CMR 134.00;

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(b) occurs on or after July 1, 2015 and results in a Collision, Limited Collision, or Property Damage Liability claim payment of more than \$1,000 in excess of any applicable deductible for damage to or caused by a vehicle subject to 211 CMR 134.00;

(c) occurs before July 1, 2015, is caused by a vehicle subject to 211 CMR 134.00, and results in a Bodily Injury Liability only claim payment of more than \$500;

(d) occurs on or after July 1, 2015, is caused by a vehicle subject to 211 CMR 134.00, and results in a Bodily Injury Liability only claim payment of more than \$1,000.

(4) Traffic Law Violations. Any conviction of an operator, including payments made or assessed pursuant to M.G.L. c. 90C, or any assignment of the operator to a driver alcohol education program or controlled substance abuse treatment or rehabilitation program, for a traffic law violation as listed on the Division's website shall be subject to 211 CMR 134.00. 211 CMR 134.00 also shall take into consideration certain major and minor out-of-state traffic law violations as specified by the Commissioner and posted on the Division's website, as well as convictions reported to the Registry of Motor Vehicles as the result of any compact entered into by the Secretary of Public Safety and Security for the exchange of information between states.

(5) Comprehensive Coverage Claims. Any claim made under Comprehensive Coverage for which payment is made shall be a Comprehensive Coverage claim subject to 211 CMR 134.00, as specified in 211 CMR 134.05.

(6) Personal Injury Protection Claims. Any claim under Personal Injury Protection Coverage for which the Involved Operator was determined to be more than 50% at fault shall be subject to 211 CMR 134.00, as specified in 211 CMR 134.05.

134.04: Notification of At-fault Accidents

All Insurers shall report to the Merit Rating Board all claims arising from At-fault Accidents in accordance with the MRB Manual(s) under the following circumstances during Fixed-and-established and Competitive Markets:

(1) Claims under Bodily Injury Liability Coverage - Single Vehicle Accidents. Notification of a Bodily Injury Liability Coverage claim is required only when such claim is not associated with any Property Damage Liability Coverage or Collision Coverage claim reported pursuant to 211 CMR 134.04(2) or 211 CMR 134.04(3) in connection with the same At-fault Accident. Within 20 working days of the payment of any Bodily Injury Liability Coverage claim in excess of the amounts specified in 211 CMR 134.03(3) that resulted from an accident involving only one vehicle where that vehicle was a vehicle subject to 211 CMR 134.00, the Insurer shall report an At-fault Accident to the Merit Rating Board and shall notify the Involved Operator of the report. If the Policyholder is a person other than the Involved Operator, the Insurer shall send the Policyholder a copy of the notice.

(2) Claims under Property Damage Liability Coverage - Single Vehicle Accidents. Within 20 working days of the payment of any Property Damage Liability Coverage claim in excess of the amounts specified in 211 CMR 134.03(3) that resulted from an accident involving only one vehicle, where that vehicle was a vehicle subject to 211 CMR 134.00, the Insurer shall report an At-fault Accident to the Merit Rating Board and shall notify the Involved Operator of the report. If the Policyholder is a person other than the Involved Operator, the Insurer shall send the Policyholder a copy of the notice.

(3) Claims under Collision Coverage - Single Vehicle Accidents. Within 20 working days of the payment of any Collision Coverage claim in excess of the amounts specified in 211 CMR 134.03(3) that resulted from an accident involving only one vehicle, where that vehicle was a vehicle subject to 211 CMR 134.00, the Insurer shall report an At-fault Accident to the Merit Rating Board and shall notify the Involved Operator of the report unless the claim resulted from damage to the vehicle caused by flying gravel, missiles or falling objects. If the Policyholder is a person other than the Involved Operator, the Insurer shall send the Policyholder a copy of the notice.

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(4) Claims under Bodily Injury Liability Coverage - Multiple Vehicle Accidents. Notification of a Bodily Injury Liability Coverage claim is required only when such claim is not associated with any Property Damage Liability Coverage or Collision Coverage claim reported pursuant to 211 CMR 134.04(5) or 211 CMR 134.04(6) in connection with the same At-fault Accident. Within 20 working days of the payment of any Bodily Injury Liability Coverage claim in excess of the amounts specified in 211 CMR 134.03(3) that resulted from an accident involving more than one vehicle, where at least one vehicle was a vehicle subject to 211 CMR 134.00, the Insurer shall report an At-fault Accident to the Merit Rating Board and shall notify the Involved Operator of the report. If the Policyholder is a person other than the Involved Operator, the Insurer shall send the Policyholder a copy of the notice.

(5) Claims under Property Damage Liability Coverage - Multiple Vehicle Accidents. Within 20 working days of the payment of any Property Damage Liability Coverage claim in excess of the amounts specified in 211 CMR 134.03(3) that resulted from an accident involving more than one vehicle, where at least one vehicle was a vehicle subject to 211 CMR 134.00, the Insurer shall report an At-fault Accident to the Merit Rating Board and shall notify the Involved Operator of the report. If the Policyholder is a person other than the Involved Operator, the Insurer shall send the Policyholder a copy of the notice.

(6) Claims under Collision Coverage - Multiple Vehicle Accidents. Within 20 working days of the filing of any Collision Coverage claim in excess of the amounts specified in 211 CMR 134.03(3) that resulted from an accident involving more than one vehicle, where at least one vehicle was a vehicle subject to 211 CMR 134.00, there shall be a conference of the Insurer with whom the claim has been filed and all Insurers of operators who were involved in the accident and who might be alleged to have been at fault, unless the Insurer with whom the claim has been filed has denied the claim or has determined that the operator of its insured vehicle is more than 50% at fault. A telephone conference among the Insurers shall satisfy the requirement that a conference be held. If no conference is held, the Insurer shall report the At-fault Accident to the Merit Rating Board in accordance with 211 CMR 134.04(3). Within 45 working days of any conference, the Insurers shall determine which operator, if any, was at fault in excess of 50%. If any Involved Operator is determined to have been at fault in excess of 50%, the Insurer of that Involved Operator shall report an At-fault Accident to the Merit Rating Board, and shall notify the Involved Operator of the report unless this Insurer has denied each Property Damage Liability Coverage or Collision Coverage claim resulting from the accident or closed each such claim resulting from the accident with a payment of less than the amounts specified in 211 CMR 134.03(3). If the Policyholder is a person other than the Involved Operator, the Insurer shall send to the Policyholder a copy of the notice within 60 working days of the date the claim was filed.

(7) Claims under Limited Collision Coverage - Multiple Vehicle Accidents. Within 20 working days of the payment of any Limited Collision Coverage claim in excess of the amount specified in 211 CMR 134.03(3) that resulted from an accident involving more than one vehicle, where at least one vehicle is a vehicle subject to 211 CMR 134.00, there shall be a conference of the Insurer with whom the claim has been filed and all Insurers of operators who were involved in the accident and who might be alleged to have been at fault. A telephone conference among the Insurers shall satisfy the requirement that a conference be held. Within 45 working days of any conference, the Insurers shall determine which operator, if any, was at fault in excess of 50%. If any Involved Operator is determined to have been at fault in excess of 50%, the Insurer of that Involved Operator shall report an At-fault Accident to the Merit Rating Board and shall notify the Involved Operator of the report unless this Insurer has denied each Property Damage Liability Coverage or Collision Coverage claim resulting from the accident or closed each such claim with a payment of less than the amounts specified in 211 CMR 134.03(3). If the Policyholder is a person other than the Involved Operator, the Insurer shall send to the Policyholder a copy of the notice within 60 working days of the date the claim was filed.

(8) Disputed Claims. Notice required by 211 CMR 134.04(6) or (7) may be deferred up to one year from the date of the accident, if:

- (a) the Insurer has determined, after any conference required by 211 CMR 134.04(6) or (7), that the Involved Operator was not at fault in excess of 50%; and
- (b) an inter-company arbitration petition has been filed or a civil action has been initiated following denial of a Property Damage Liability Coverage claim.

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(9) Form of Notice of At-fault Accident.

(a) Notice to the MRB. During both Fixed-and-established and Competitive Markets, all Insurers shall report to the Merit Rating Board all claims arising from At-fault Accidents as described in 211 CMR 134.04(1) through (7) in accordance with the MRB Manual(s) of Administrative Procedures.

(b) During Competitive Markets. The Notice of At-fault Accident Determination provided to the Policyholder or Involved Operator shall use a form approved by the Commissioner. The Notice of At-fault Accident Determination shall advise the Policyholder or Involved Operator that the At-fault Accident may adversely affect future policy premiums under any Insurer's Merit Rating Plan. The Notice of At-fault Accident Determination sent to the Policyholder and/or the Involved Operator shall contain an appeal form that the Policyholder or the Involved Operator must use to appeal the At-fault Accident determination to the Board of Appeal pursuant to M.G.L. c. 175, § 113P.

(c) During Fixed-and-established Markets. The Surcharge Notice that the Insurer provides to the Policyholder or Involved Operator shall be the form approved by the Commissioner that is contained in the MRB's *Manual of Administrative Procedures*. The Surcharge Notice shall include an appeal form that the Policyholder or the Involved Operator must use to appeal the Surcharge Notice to the Board of Appeal pursuant to M.G.L. c. 175, § 113P.

(10) Failure to Submit. Failure to accurately complete and submit to the Merit Rating Board, within the specified time, the Surcharge Notice (in a Fixed-and-established Market) or the Notice of At-fault Accident Determination (in a Competitive Market) required by 211 CMR 134.04(1) through (7) may subject the Insurer to the penalty set forth in 211 CMR 134.16.

(11) Correction of Notice. Failure to correct and return a Surcharge Notice (in a Fixed-and-established Market) or a Notice of At-fault Accident Determination (in a Competitive Market) found to be in error in the manner specified in the MRB Manual(s) may subject the Insurer to the penalty set forth in 211 CMR 134.16.

134.05: Notification of a Claim under Comprehensive Coverage or Personal Injury Protection Coverage

All Insurers shall report to the Merit Rating Board claims under Comprehensive Coverage and Personal Injury Protection Coverage in accordance with the MRB Manual(s) in the following circumstances during Fixed-and-established and Competitive Markets:

(1) Claims under Comprehensive Coverage. Within 30 working days of the payment of any Comprehensive Coverage claim for a vehicle subject to 211 CMR 134.00, the Insurer shall notify the Merit Rating Board in the manner specified in the MRB Manual(s).

(2) Claims under Personal Injury Protection Coverage. Within 30 working days of the final payment of any Personal Injury Protection Coverage claim under the Policy for the vehicle involved in the accident and providing coverage to the operator, occupants or pedestrians for a vehicle subject to 211 CMR 134.00, where the Involved Operator is more than 50% at fault for the accident, the Insurer shall notify the Merit Rating Board in the manner specified in the MRB Manual(s). For the purposes of 211 CMR 134.05(2), an at fault Personal Injury Protection Coverage claim paid under the Policy for the vehicle involved in the accident and providing coverage to the operator, occupants or pedestrians shall be any claim made following a single vehicle At-fault Accident or a multiple vehicle At-fault Accident.

(3) Form of Notice to the Merit Rating Board. The Merit Rating Board shall specify in the MRB Manual(s) the form of the Comprehensive Coverage claim notice and the Personal Injury Protection Coverage claim notice, the manner of completing said notices, and the timing of the submission of said notices to the Merit Rating Board.

(4) Failure to Submit. Failure to accurately complete and submit, within the specified time, the Comprehensive Coverage claim notice or the Personal Injury Protection Coverage claim notice required by 211 CMR 134.05(3) to the Merit Rating Board may subject the Insurer to the penalty set forth in 211 CMR 134.16.

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(5) Correction of Claim Notices. Failure to correct and return a Comprehensive Coverage claim notice or a Personal Injury Protection Coverage claim notice found to be in error in the manner specified in the MRB Manual(s) may subject the Insurer to the penalty set forth in 211 CMR 134.16.

134.06: Notice Following Traffic Law Violations

The provisions of 211 CMR 134.03 shall apply in both Fixed-and-established and Competitive Markets.

(1) No Notice by Insurer or Merit Rating Board. Citation for any traffic law violation subject to 211 CMR 134.00 shall serve as sufficient notice to the Involved Operator that premium adjustments may be applied. There shall be no right of appeal to the Board of Appeal pursuant to M.G.L. c. 175, § 113P or M.G.L. c. 175E, § 7A.

(2) Notice on Citation. The Merit Rating Board shall take reasonable steps to ensure that each citation issued for a traffic law violation informs the Involved Operator that election of any of the alternatives afforded by M.G.L. c. 90C may result in an adjustment of premium.

134.07: Operator Information

(1) Collection of Operator Information. Prior to requesting SDIP Information or Merit Rating Information for any Policy subject to 211 CMR 134.00, an Insurer shall obtain, from the Policyholder, Operator Information for the Policyholder and for any Listed Operator covered by the Policy. Each Insurer shall require its Policyholders to indicate whether a Listed Operator also is the Policyholder of or listed as an operator on any other Policy subject to 211 CMR 134.00.

(2) Correction of Operator Information. Following the rejection by the Merit Rating Board of a request for SDIP Information or Merit Rating Information because of incorrect Operator Information, the Insurer must correct the Operator Information in the manner specified in the MRB Manual(s).

(3) Penalties. Failure to collect or correct Operator Information in accordance with 211 CMR 134.07(1) and (2) and applicable portions of the MRB Manual(s) may subject the Insurer to the penalty set forth in 211 CMR 134.16.

134.08: Acquisition of SDIP Information or Merit Rating Information from the Merit Rating Board

(1) Insurers shall acquire SDIP Information from the Merit Rating Board, as set forth in 211 CMR 134.08(2) through 211 CMR 134.08(6), during Fixed-and-established Markets. Insurers may acquire Merit Rating Information from the Merit Rating Board at any time, at the discretion of the Insurer, during Competitive Markets. Insurers are not required to obtain Merit Rating Information from the Merit Rating Board for calculating Private Passenger Motor Vehicle insurance premiums pursuant to a Merit Rating Plan filed by the Insurer for use in a Competitive Market.

(2) Initial Inquiries.

(a) New Policies. Insurers shall acquire SDIP Information for a new Policy subject to 211 CMR 134.00 from the Merit Rating Board no earlier than 45 days before the first day of the month of the effective date of the Policy and no later than 15 days after the date the Policy is issued. The inquiry shall be made in the manner prescribed in the MRB Manual(s).

(b) Renewal Policies. Insurers shall acquire SDIP Information for a renewal Policy subject to 211 CMR 134.00 from the Merit Rating Board no earlier than 75 days before the first day of the month of the effective date of the Policy and prior to issuing the Policy. The inquiry shall be made in the manner prescribed in the MRB Manual(s).

(3) Inquiries for New Operators. In the event a Policy subject to 211 CMR 134.00 is endorsed to add an operator as a Listed Operator during the first 245 days of the Policy term, the Insurer shall acquire SDIP Information for the operator that is being added from the Merit Rating Board in the manner prescribed in the MRB Manual(s).

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(4) Inquiries for "Add Property Damage Liability Coverage". Insurers shall acquire SDIP Information for a Policy subject to 211 CMR 134.00 when Property Damage Liability Coverage is added to a Policy that previously had no Property Damage Liability Coverage no earlier than 45 days before the first day of the month of the endorsement date and no later than 15 days after the effective date of the endorsement. The inquiry shall be made in the manner prescribed in the MRB Manual(s).

(5) Inquiries for "Add Collision Coverage". Insurers shall acquire SDIP Information for a Policy subject to 211 CMR 134.00 when Collision Coverage is added to the Policy that previously had no Collision Coverage no earlier than 45 days before the first day of the month of the endorsement date and no later than 15 days after the effective date of the endorsement. The inquiry shall be made in the manner prescribed in the MRB Manual(s).

(6) Reinquiries. Following the receipt of a Notice to Reinquire from the Merit Rating Board, an Insurer must submit a request for SDIP or Merit Rating Plan Information to the Merit Rating Board for the Policyholder and for each Listed Operator in the manner prescribed in the MRB Manual(s).

(7) Policy Numbers. Insurers must assign policy numbers unique to each Policy being issued within a particular policy year. This number must be consistently reported and/or used on the Coverage Selections Page, inquiries to the Merit Rating Board, Notices of At-fault Accident Determination, Surcharge Notices, Comprehensive Coverage claim notices, Personal Injury Protection Coverage claim notices, premium and loss statistical records, Policy data reported to the Registry of Motor Vehicle's Uninsured Motorist System (UMS), and any other document calling for identification utilizing a Policy number. Upon written request by an Insurer, the Commissioner may grant a one-year waiver of the requirements of 211 CMR 134.08(7) if the Insurer demonstrates that compliance would result in undue hardship.

134.09: Posting of At-fault Accidents, Traffic Law Violations and Claims

(1) Posting of At-fault Accidents. Upon receipt of a Surcharge Notice or Notice of At-fault Accident Determination sent by an Insurer in accordance with 211 CMR 134.04, the Merit Rating Board shall post the At-fault Accident to the account of the Involved Operator.

(2) Posting of Traffic Law Violations. Upon receipt of a citation for a traffic law violation which is listed on the schedule of violations posted on the Division's website at www.mass.gov/doi and for which payment has been made pursuant to M.G.L. c. 90C, or for which payment is legally in default, or for which the court either has found the Involved Operator guilty or responsible, or has assigned the operator to an alcohol education program or controlled substance abuse treatment or rehabilitation program, the Merit Rating Board shall post the traffic law violation to the account of the Involved Operator, unless the violation was deemed to be an owner violation, in which case the Merit Rating Board shall post the traffic law violation to the account of the owner of the vehicle.

(3) Determination of the Incident Type. When posting an At-fault Accident claim or traffic law violation to the account of an Involved Operator or a Policyholder, the Merit Rating Board shall assign it an incident type.

(a) Major Accident. For accidents occurring before July 1, 2015, an At-fault Accident wherein the claim payment under either:

1. Property Damage Liability Coverage;
2. Collision Coverage;
3. Limited Collision Coverage; or
4. Bodily Injury Liability Coverage if there is neither a surchargeable Property Damage Liability Coverage claim nor a surchargeable Collision Coverage claim pursuant to 211 CMR 134.09(3)(a)1. or 2. as a result of the incident with the Bodily Injury Liability Coverage claim;

exclusive of any deductible, exceeds \$2,000.

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For accidents occurring on or after July 1, 2015, a Major Accident is an At-fault Accident wherein the claim payment under the coverages listed in 211 CMR 134.09(3)(a), exclusive of any deductible, exceeds \$5,000.

(b) Minor Accident. For accidents occurring before July 1, 2015, an At-fault Accident wherein the claim payment under either:

1. Property Damage Liability Coverage;
2. Collision Coverage;
3. Limited Collision Coverage; or
4. Bodily Injury Liability Coverage if there is neither a surchargeable Property Damage Liability Coverage claim nor a surchargeable Collision Coverage claim pursuant to 134.09(3)(b)1. or 2. as a result of the incident with the Bodily Injury Liability Coverage claim;

exclusive of any deductible, exceeds \$500 but is no more than \$2,000.

For accidents occurring on or after July 1, 2015, a Minor Accident is an At-fault Accident wherein the claim payment under the coverages listed in 211 CMR 134.09(3)(a), exclusive of any deductible, exceeds \$1,000 but is no more than \$5,000.

(c) Major Traffic Law Violation. Those traffic law violations so designated by the Commissioner and posted on the Division's website at www.mass.gov/doi.

(d) Minor Traffic Law Violation. Those traffic law violations so designated by the Commissioner and posted on the Division's website at www.mass.gov/doi.

(4) Posting of Comprehensive Coverage Claims. Upon receipt of a Comprehensive Coverage claim notice from an Insurer in accordance with 211 CMR 134.05, the Merit Rating Board shall post a Comprehensive Coverage claim to the account of the Policyholder. In the case where two individuals are listed as the Policyholders and joint owners of the insured vehicle(s), the first person listed on the Policy shall be considered to be the Policyholder for the purpose of 211 CMR 134.09(4).

(5) Posting of Personal Injury Protection Coverage Claims. Upon receipt of a Personal Injury Protection Coverage claim notice from an Insurer in accordance with 211 CMR 134.05, the Merit Rating Board shall post a Personal Injury Protection Coverage claim to the account of the Involved Operator.

(6) Multiple Incidents. In a Fixed-and-established Market, if an Involved Operator or Policyholder has two or more At-fault Accident claims or traffic law violations on file at the Merit Rating Board, all of which arose from the same incident, the Merit Rating Board shall assign a point value to the At-fault Accident claim or traffic law violation with the greatest number of points as specified in 211 CMR 134.13 and shall assign zero points to the remaining At-fault Accident claims or traffic law violations arising from the same incident.

134.10: Computation of Safe Driver Insurance Plan Surcharges and Credits

(1) 211 CMR 134.10(2) through 211 CMR 134.10(8) shall be required only for Policies issued during a Fixed-and-established Market.

(2) Information Used for Computation. For Policies Subject to the Safe Driver Insurance Plan. In response to a request from an Insurer for SDIP Information for a Policy subject to 211 CMR 134.00, the Insurer shall use the total number of Surcharge Points or Credit Code for each Listed Operator as reported by the Merit Rating Board to calculate the applicable operator surcharge factor or operator credit factor in accordance with 211 CMR 134.10(3). The Insurer shall use the resulting factor to adjust the Policyholder's premium accordingly.

(3) Operator Surcharge Factor or Operator Credit Factor. For Policies subject to the Safe Driver Insurance Plan, each Listed Operator shall be assigned an operator surcharge factor or an operator credit factor based on the operator's driving history record. The surcharge factor is equal to one plus the product of the total number of SDIP Surcharge Points, calculated pursuant to 211 CMR 134.10(4)(a), and the Surcharge Percentage. The credit factor is equal to one minus either the Excellent Driver Discount or the Excellent Driver Discount Plus, as applicable.

134.10: continued

(4) Calculation of Total Operator SDIP Points.(a) For Policies Subject to the Safe Driver Insurance Plan.

1. When the Incident-free Period is less than or equal to three, the total number of Surcharge Points applicable to the operator shall be the sum of the Surcharge Points identified for each Surchargeable Incident in the Policy Experience Period.
2. When the Incident-free Period is greater than three, and the total number of Surchargeable Incidents in the most recent five years of the Policy Experience Period is three or less, the Surcharge Points applicable to each incident shall be reduced by one and the total number of Surcharge Points applicable to the operator shall be the sum of those reduced Surcharge Points. In no event shall the Surcharge Points for any single incident be reduced below zero.

(b) For all Policies Subject to the Safe Driver Insurance Plan. Only Surchargeable Incidents that are within the Policy Experience Period shall be used in calculating Surcharge Points, however, Surcharge Points for Surchargeable Incidents in the sixth year of the Policy Experience Period shall be set at zero. The Merit Rating Board shall use the Surcharge Date of a Surchargeable Incident to determine which Surchargeable Incidents are within the Policy Experience Period. The Surcharge Points assigned for each major accident, each minor accident, each minor traffic law violation and each major traffic law violation, as designated by the Commissioner and posted on the Division's website at www.mass.gov/doi, are set forth in 211 CMR 134.13.

(5) Credit for Incident-free Years.(a) For Policies Subject to the Safe Driver Insurance Plan.

1. When the Incident-free Period is at least five, but less than six years, a unique Credit Code shall be assigned to the operator.
2. When the Incident-free Period is at least six years, a unique Credit Code shall be assigned to the operator.
3. For operators with at least five full years of driving experience, when the Incident-free Period is greater than three, and the only Surchargeable Incident within the Policy Experience Period is a minor traffic law violation, the disposition of which was non-criminal under M.G.L. c. 90C, the Credit Code assigned to the operator shall be the same as that assigned to operators in 211 CMR 134.10(5)(a)1.

(6) Operator SDIP Ranges. For Policies Subject to the Safe Driver Insurance Plan, the total number of SDIP points range from 0 to 45. The maximum number of SDIP points is 45.

(7) Policy Experience Period. For Policies Subject to the Safe Driver Insurance Plan, a Surchargeable Incident in the sixth year of the Policy Experience Period (as determined by the Surcharge Date) will not be assigned Surcharge Points. A Surchargeable Incident in the sixth year will prevent an operator from earning an Incident-free Year.

(8) Incarcerated Operators. Notwithstanding any other provision of 211 CMR 134.00, where sufficient information is available, operator credits and surcharges shall be determined in accordance with the provisions of St. 1997, c. 43, § 130.

134.11: Application of Safe Driver Insurance Plan or Merit Rating Plan

(1) 211 CMR 134.11(2) through 211 CMR 134.11(5) shall be required only for Policies issued during a Fixed-and-established Market. 211 CMR 134.11(6) through 211 CMR 134.11(8) apply in both Fixed-and-established and Competitive Markets.

(2) Policy Issuance. No Policy subject to 211 CMR 134.00 shall be issued without SDIP Information, except as approved by the Commissioner, and as specified in the MRB Manual(s).

(3) Coverage Selections Page. Each Insurer shall assure that the first Coverage Selections Page sent to a Policyholder shows the total premium, correctly adjusted for the operator credit factor or operator surcharge factor, as applicable, unless an explicit provision of the MRB Manual(s) allows, or the Insurer has requested, and has received from the Commissioner, in writing, a waiver that allows the Insurer to display the total premium adjustment amount for the Policy either on a replacement Coverage Selections Page or on an invoice for the Policy, in lieu of displaying it on the initial Coverage Selections Page, as required by 211 CMR 134.11(3).

134.11: continued

- (4) Safe Driver Insurance Plan (SDIP) Statement. For Policies subject to the SDIP during Fixed-and-established Markets, each Insurer shall assure that each Policyholder not eligible for the Excellent Driver Discount Plus receives a SDIP Statement, which includes an itemization on a form approved by the Commissioner of the total number of operator SDIP points assigned to each Listed Operator. The SDIP Statement and the method of mailing the SDIP Statement to the Policyholder shall conform to the requirements specified in the MRB Manual(s).
- (5) Assignment of Operators to Policies. For Policies subject to the Safe Driver Insurance Plan, the process for assigning operators to vehicles shall be consistent with the rules prescribed in the *Private Passenger Motor Vehicle Insurance Manual* from which the premium is generated.
- (6) Refunds.
- (a) For Policies Subject to Merit Rating Plans during Competitive Markets. Whenever responsibility for an At-fault Accident or a traffic law violation of an Involved Operator is reversed by a court of competent jurisdiction or the Board of Appeal for an incident previously reported and billed, Insurers shall re-rate Policies to exclude the effect of such incident in the calculation of Private Passenger Motor Vehicle insurance premiums.
- (b) For Policies Subject to the Safe Driver Insurance Plan during Fixed-and-established Markets. Whenever the number of SDIP points is decreased by reason of a reversal by the Superior Court or the Board of Appeal of an incident previously reported and billed, Insurers shall re-rate policies to exclude the effect of such accident in the calculation of Private Passenger Motor Vehicle insurance premiums.
- (7) Affirmative Duty. All Insurers and their producers have an affirmative duty to correctly apply the Safe Driver Insurance Plan's operator surcharge factor, operator credit factor or Credit Code, or the premium adjustment calculated in accordance with the Insurer's Merit Rating Plan, as applicable, for each Listed Operator.
- (8) Penalties. Failure to correctly apply the Safe Driver Insurance Plan's operator surcharge factor, operator credit factor, or Credit Code, or the premium adjustment calculated in accordance with the Insurer's Merit Rating Plan, as applicable, for each Listed Operator may subject the Insurer to penalty set forth in 211 CMR 134.16.

134.12: Reporting of Information

Insurers shall submit to the Commissioner, to the Merit Rating Board or to the Designated Statistical Agent, such records, statistics, or other compilations of data pertaining to Merit Rating Plans including, but not limited to, the Safe Driver Insurance Plan, as the Commissioner or the Merit Rating Board may require, in both Fixed-and-established and Competitive Markets. The Commissioner shall prescribe the form of such submissions. The Designated Statistical Agent shall send to the Merit Rating Board copies of statistical records and copies of any statistical records forwarded to the Automobile Insurers Bureau of Massachusetts for all policies subject to 211 CMR 134.00, as directed by the Commissioner.

134.13: Schedule of Surcharge Points

- (1) During Fixed-and-established Markets, Surcharge Points will be assigned for each Surchargeable Incident of the type described in 211 CMR 134.13(2) through (6). During a Competitive Market, an Insurer may adopt a Merit Rating Plan with a different system for adjusting premiums for At-fault Accidents and traffic law violations than the point system set forth in 211 CMR 134.13(2) through (6).
- (2) Major Accident. Four Surcharge Points shall be assigned to each major accident, as defined in 211 CMR 134.09(3)(a), that is within the Experience Period of the Policy.
- (3) Minor Accident. Three Surcharge Points shall be assigned to each minor accident, as defined in 211 CMR 134.09(3)(b), that is within the Experience Period of the Policy.
- (4) Major Traffic Law Violation. Five Surcharge Points shall be assigned to each major traffic law violation, as defined in 211 CMR 134.09(3)(c), that is within the Experience Period of the Policy.

134.13: continued

(5) Minor Traffic Law Violation. Two Surcharge Points shall be assigned to each minor traffic law violation, as defined in 211 CMR 134.09(3)(d), that is within the Experience Period of the Policy. No Surcharge Points shall be assigned to a minor traffic law violation which is the first traffic law violation, as determined by Surcharge Date, within the Policy Experience Period if the disposition of the violation was non-criminal under M.G.L. c. 90C.

(6) Comprehensive Coverage Claims. Surcharge Points for Comprehensive Coverage claims may be assigned to policies affording Comprehensive Coverage; however, no points may be assigned unless four or more Comprehensive Coverage claims totaling \$2,000 or more have occurred. In establishing the four or more Comprehensive Coverage claims totaling \$2,000 or more, claims for damages caused by acts of God shall be excluded.

134.14: Merit Rating Board Liaison

(1) Designation. Each Insurer with one or more Policies subject to 211 CMR 134.00 shall designate an employee as its Merit Rating Board liaison and shall notify the Commissioner and the Merit Rating Board in writing of its designation in the manner prescribed in the MRB Manual(s). Within ten working days of the reassignment of a Merit Rating Board liaison, an Insurer shall replace or re-designate its Merit Rating Board liaison and notify the Commissioner and the Merit Rating Board in writing of the replacement or re-designation.

(2) Information. Each Insurer shall be responsible for ensuring that its Merit Rating Board Liaison becomes and remains informed of the provisions of 211 CMR 134.00 and of the MRB Manual(s).

134.15: MRB Manual(s) of Administrative Procedures

The Merit Rating Board shall prepare and distribute, with the assistance of the Merit Rating Board Liaisons designated pursuant to 211 CMR 134.14 and the Commissioner, manual(s) setting forth the administrative rules to be followed by all Insurers in implementing the provisions of 211 CMR 134.00. Copies of any new MRB Manual(s) or any proposed amendment to the MRB Manual(s) prepared in accordance with 211 CMR 134.15 shall be provided to each Merit Rating Board Liaison and to any other interested party.

134.16: Penalties

(1) Any Insurer or person violating 211 CMR 134.00 shall be subject to a fine of not more than \$500 for each violation in accordance with M.G.L. c. 175, § 194.

(2) Any Insurer or person who disseminates or uses SDIP Information or Merit Rating Information from the Merit Rating Board for any purpose other than for motor vehicle insurance purposes or criminal law enforcement purposes shall be subject to a fine of not more than \$1,000 for each offense or by imprisonment for not more than one year, or both, in accordance with M.G.L. c. 6C, § 57A(b).

134.17: Severability

If any section or portion of a section of 211 CMR 134.00, or its application to any person, entity or circumstance is held invalid by any court, the remainder of 211 CMR 134.00 or the application of such provision to other persons, entities or circumstances shall not be affected thereby.

REGULATORY AUTHORITY

211 CMR 134.00: M.G.L. c. 175, § 113B; c. 273, § 38; c. 175A, § 15; and c. 175E, § 10.

211 CMR: DIVISION OF INSURANCE

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