



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF CONSUMER AFFAIRS

DIVISION OF INSURANCE

470 ATLANTIC AVENUE

BOSTON, MA 02210-2208

(617) 521-7794

PRISCILLA H. DOUGLAS

SECRETARY

LINDA RUTHARDT

COMMISSIONER

**Bulletin No. 95-04**

To: Writers of Massachusetts Private Passenger Automobile Insurance and Massachusetts Merit Rating Liaisons and Correspondents

From: Linda Ruthardt, Commissioner of Insurance

A handwritten signature in cursive script, appearing to read "Linda Ruthardt".

Date: May 23, 1995

Re:

**Announcement**

① The Surcharge Notice to be Issued in Accordance with the Requirements of the Commonwealth's Safe Driver Insurance Plan

and

② Revised 211 CMR 74.00 Standards Of Fault To Be Used By The Board Of Appeal On Motor Vehicle Liability Policies And Bonds And Insurers In Determining The Application Of Surcharges In Accordance With M.G.L. c.175 § 113P.

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The Surcharge Notice form (211 CMR 132.05(7)) has been recently revised. Attached is a copy of the new Surcharge Notice. The notice includes a revised Appeal Form (found on the back of the new form). The new notice has an implementation date of July 1, 1995 which coincides with the effective date of the new "Standards of Fault" (211 CMR 74.00 "Standards Of Fault To Be Used By The Board Of Appeal On Motor Vehicle Liability Policies And Bonds And Insurers In Determining The Application Of Surcharges In Accordance With M. G. L. c. 175 § 113P").

The Surcharge Notice must now include the applicable standard of fault code number followed by the explanation in its entirety. This will insure a clear and complete notice of the specific standard being applied to the at fault accident.

The "Standards of Fault" 211CMR 74.00 have also been revised. The new regulation provides comprehensive and understandable standards that will insure easy and proper application.

Any questions regarding this bulletin should be directed to Ada Maria Barry, Division of Insurance, (617) 521-7443.

# SAFE DRIVER INSURANCE PLAN SURCHARGE NOTICE

The \_\_\_\_\_ (\_\_\_\_\_) Insurance Company hereby notifies the OPERATOR named below that a surcharge will be imposed as required by M.G.L. c. 175 § 113B, as a determination has been made that the OPERATOR is not 50% at fault for the accident described herein.

**This surcharge will result in an increase in premium when an insurance policy is next renewed for any vehicle on which the OPERATOR is listed.**

## OPERATOR INFORMATION

Name				
Address				
City, State				
Zip				
Date of Birth		Driver's License No.		State Code

FDL      ♦ If any of the above operator information is incorrect, **do not appeal.**  
 Contact your insurance company to make the appropriate corrections.

## ACCIDENT INFORMATION

Accident Date	Surcharge Notice Date	Location Code	Policy No.	Claim No.

Standard of Fault Code		Explanation

INSURANCE AGENT	POLICYHOLDER <small>(if different than the OPERATOR)</small>
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Name		Name	
Address		Address	
City, State		City, State	
Zip		Zip	
		Date of Birth	Driver's License No.

## SURCHARGE APPEAL INSTRUCTIONS

IF YOU BELIEVE YOU WERE NOT MORE THAN 50% AT FAULT IN THIS ACCIDENT AND WISH TO APPEAL TO THE MASSACHUSETTS DIVISION OF INSURANCE, YOU SHOULD:

(A) Complete the Surcharge Appeal Form on the reverse side of this notice.

(B) Send a check or money order for \$25.00 payable to the Commonwealth of Massachusetts. **This filing fee is non-refundable.** File only one appeal per accident. The Division of Insurance does not accept cash.

(C) Return this completed form with the filing fee by mail to: **DIVISION OF INSURANCE  
P.O. BOX 370009  
BOSTON, MA 02241-0709**

(D) A request for **appeal** must be submitted and received **WITHIN 30 DAYS** of the Surcharge Notice Date.

(E) The Division of Insurance will notify you as to the date, time, and location of your hearing.

♦ Filing a surcharge appeal does not prevent the application of the surcharge to the premium. If the surcharge is billed, it **MUST** be paid. If it is later reversed, your SDIP step will be adjusted, and the amount paid will be refunded or credited by the Insurance Company.

NAME \_\_\_\_\_

If the operator's mailing address is different than the address shown above, please indicate corrections here → ADDRESS \_\_\_\_\_

CITY STATE ZIP \_\_\_\_\_

**SURCHARGE APPEAL FORM**

The OPERATOR should provide as much of the following accident information as possible:

PLEASE PRINT

<b>ACCIDENT INFORMATION</b>	Time _____ : _____ <input type="checkbox"/> AM <input type="checkbox"/> PM	Number of vehicles involved _____
Location _____	CITY/TOWN _____ STATE _____ STREET _____	No. of lanes in each direction _____
If intersection, intersecting street _____		No. of lanes in each direction _____
Your speed prior to the accident _____ mph	Posted speed _____ mph	

<b>SIGHT LINES/DISTANCE</b>	When you first saw the other vehicle, how far were you from it? _____
If a rear end collision, give distance between you and the vehicle you were following prior to accident. _____	
If an intersection collision, give your view in distance to right _____ to left _____ before entering intersection.	
<b>POLICE</b>	at accident scene? <input type="checkbox"/> No <input type="checkbox"/> Yes Were you issued a citation ("ticket")? <input type="checkbox"/> No <input type="checkbox"/> Yes

<b>DAMAGE</b>	(example – passenger side rear door)
To the vehicle you were driving _____	
To other vehicle _____	
Identify damaged property other than vehicles _____	

<b>BEFORE THE ACCIDENT YOUR CAR WAS</b> <input checked="" type="checkbox"/>	<b>LIGHT CONDITIONS</b>
<input type="checkbox"/> Going straight ahead <input type="checkbox"/> Starting from parked position <input type="checkbox"/> Avoiding object in road <input type="checkbox"/> Starting from stop sign <input type="checkbox"/> Starting from traffic control <input type="checkbox"/> Making a left turn	<input type="checkbox"/> Daylight <input type="checkbox"/> Dusk <input type="checkbox"/> Dark-Unlighted area <input type="checkbox"/> Dark-Lighted area <input type="checkbox"/> Other _____
<input type="checkbox"/> Making a right turn <input type="checkbox"/> Turning right on red <input type="checkbox"/> Making a U-turn <input type="checkbox"/> Stopped in traffic <input type="checkbox"/> Slowing or Stopping <input type="checkbox"/> Parked	<input type="checkbox"/> Merging <input type="checkbox"/> Changing lanes <input type="checkbox"/> Overtaking another vehicle <input type="checkbox"/> Backing <input type="checkbox"/> Other _____

<b>TRAFFIC CONTROL</b> <input checked="" type="checkbox"/>
<input type="checkbox"/> Traffic Light <input type="checkbox"/> None <input type="checkbox"/> Stop Sign <input type="checkbox"/> Construction area <input type="checkbox"/> Yield Sign <input type="checkbox"/> Officer/Guard <input type="checkbox"/> Flashing Light <input type="checkbox"/> Other _____

<b>ROADWAY SURFACE</b> <input checked="" type="checkbox"/>
<input type="checkbox"/> Dry <input type="checkbox"/> Sand <input type="checkbox"/> Slush <input type="checkbox"/> Mud <input type="checkbox"/> Snow/Ice <input type="checkbox"/> Wet <input type="checkbox"/> Other _____

<b>WEATHER</b> <input checked="" type="checkbox"/>
<input type="checkbox"/> Clear <input type="checkbox"/> Rain <input type="checkbox"/> Cloudy <input type="checkbox"/> Sleet/Hail <input type="checkbox"/> Fog <input type="checkbox"/> Snow <input type="checkbox"/> Mist <input type="checkbox"/> Other _____

**PROVIDE DETAILS OF HOW THE ACCIDENT HAPPENED**

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**ACCIDENT DIAGRAM**

**STATE REASON(S) WHY YOU BELIEVE YOU ARE NOT MORE THAN 50% AT FAULT FOR THE ACCIDENT**

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*An appeal must be submitted and received within 30 days of the Surcharge Notice Date.*

I, the Operator named herein, being aggrieved by the determination of the issuing insurance company that I have been found to be more than 50% at fault for the accident identified in the surcharge notice, do hereby appeal the insurance company's determination of fault in excess of 50%, pursuant to Chapter 175, section 113B of the Massachusetts General Laws. I hereby declare the foregoing information and statements are made under the pains and penalties of perjury.

X \_\_\_\_\_

OPERATOR'S SIGNATURE

DATE

Home telephone No. ( ) \_\_\_\_\_ Work telephone No. ( ) \_\_\_\_\_ Ext. \_\_\_\_\_

211 CMR 74.00: STANDARDS OF FAULT TO BE USED BY THE BOARD OF APPEAL ON  
MOTOR VEHICLE LIABILITY POLICIES AND BONDS AND INSURERS  
IN DETERMINING THE APPLICATION OF SURCHARGES IN  
ACCORDANCE WITH M.G.L. c. 175, § 113P

Section

74.01: Authority

74.02: Definitions

74.03: Purpose and Scope

74.04: Situations in Which Fault is Presumed to be More Than 50%

74.01: Authority

211 CMR 74.00 is promulgated in accordance with the authority granted the Board of Appeal on Motor Vehicle Liability Policies and Bonds by M.G.L. c. 26, § 8A, and M.G.L. c. 175, § 113P.

74.02: Definitions

Accident, an unexpected, unintended event that causes damage to the operator's vehicle, another vehicle, or other property, such damage arising out of the ownership, maintenance or use of a vehicle.

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

Center line, pavement marking, imaginary, drawn, or otherwise designated, which separates traffic moving in opposite directions.

Collision, the accidental upset of a vehicle or any physical contact of a vehicle with an object or a person.

Operator, any person who operates a motor vehicle.

Safe Driver Insurance Plan, the adjustment of insurance rates and premiums on the basis of at-fault accidents, comprehensive claims and traffic law violations pursuant to M.G.L. c. 175, § 113B.

Vehicle subject to the Safe Driver Insurance Plan, any private passenger vehicle rated in accordance with the Massachusetts Private Passenger Automobile Insurance Manual.

74.03: Purpose and Scope

The standards established by 211 CMR 74.00 shall be used by insurers and the Board in determining whether an operator is more than 50% at fault for the purpose of applying the Safe Driver Insurance Plan. The presumptions raised as to an operator being more than 50% at fault, as described in 211 CMR 74.04, shall be considered determinative unless and until the operator overcomes the presumption by producing sufficient evidence at an initial review or hearing held in accordance with the rules of the Board.

74.04: Situations in Which Fault is Presumed to be More Than 50%

**(01) Collision with a Lawfully or Unlawfully Parked Vehicle.** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is in collision with a lawfully or unlawfully parked vehicle.

**((02) Reserved.)**

**(03) Rear End Collision.** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is in collision with the rear section of another vehicle.

**((04) Reserved.)**

**(05) Out of Lane Collision.** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is partially or completely out of its proper lane and is in collision with another vehicle:

- (a) while being passed by the other vehicle, the passing vehicle being in its proper lane;
- (b) while passing the other vehicle, the other vehicle being in its proper lane; or
- (c) while changing or turning into or across the other vehicle's lane.

**((06) Reserved.)**

**(07) Failure to Signal.** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is in collision while failing to signal as required by law before turning or changing lanes.

**(08) Failure to Proceed with Due Caution from a Traffic Control Signal or Sign.**

The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when the operator fails to obey a traffic control signal or sign, or fails to proceed with due caution therefrom, and whose vehicle is thereafter in a collision with another vehicle.

**(09) Collision on Wrong Side of Road.** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is in collision with another vehicle which is moving in the opposite direction on the proper side of the roadway or center line.

**(10) Operating in the Wrong Direction.** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle in the wrong direction on a travel lane, one-way street, or highway, and whose vehicle is thereafter in a collision with another vehicle.

**(11) Collision at an Uncontrolled Intersection.** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is in collision with another vehicle at an uncontrolled intersection:

- (a) if the operator's vehicle enters a main road from a secondary road,
- (b) if both vehicles enter the intersection at the same time, and such operator's vehicle entered the intersection from the left of the other vehicle, failing to allow the vehicle on the right to proceed, or
- (c) if the operator's vehicle enters the intersection at a point in time later than the other vehicle.

**((12) Reserved.)**

**((13) Reserved.)**

**(14) Collision While in the Process of Backing Up.** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is in the process of backing up and whose vehicle is thereafter in a collision with another vehicle.

**(15) Collision While Making a Left Turn or U-Turn Across the Travel Path of a Vehicle Traveling in the Same or Opposite Direction.** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle making a left turn or U-turn across the path of travel of another vehicle moving:

- (a) in the same direction, or
- (b) in the opposite direction,

and whose vehicle is in a collision with such vehicle.

((16) Reserved.)

(17) **Leaving or Exiting from a Parked Position, Parking Lot, Alley or Driveway.**

The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is leaving or exiting from a parked position, parking lot, alley or driveway, and whose vehicle is in a collision with another vehicle.

(18) **Opened or Opening Vehicle Door(s).** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when the vehicle's door or doors are opened or opening resulting in a collision with another vehicle.

(19) **Single Vehicle Collision.** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating the only vehicle involved in a collision.

(20) **Failure to Obey the Rules and Regulations for Driving.** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when the operator violates any provision of M.G.L. Chapter 85, 89 or 90, or fails to obey the following regulations: the Metropolitan District Commission (350 CMR); Registry of Motor Vehicles (540 CMR), MA Department of Highways (720 CMR), MA Turnpike Authority (730 CMR), or MA Port Authority (740 CMR), and whose vehicle is in a collision with another vehicle.

(21) **Unattended Vehicle Collision.** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when the vehicle is left unattended and rolls resulting in a collision.

((22) Reserved.)

((23) Reserved.)

((24) Reserved.)

((25) Reserved.)

(26) **Collision While Merging onto a Highway, or into a Rotary.** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle merging onto a highway, or into a rotary, when the other vehicle is already on the highway, or in the rotary, resulting in a collision.

(27) **Non-Contact Operator Causing Collision.** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is not in a collision, but whose actions cause the collision of one or more other vehicles.

((28) Reserved.)

(29) **Failure to Yield the Right of Way to Emergency Vehicles when Required by Law.** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when the operator fails to yield the right of way to emergency vehicles (as required by M.G.L. c. 89, § 7) resulting in a collision.

((30) Reserved.)

(31) **Collision at a "T" Intersection.** The operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle coming from a roadway that terminates onto a throughway and whose vehicle is in a collision with another vehicle traveling on that intersecting throughway.

Regulatory Authority

211 CMR 74.00: M.G.L. c. 26, § 8A, and M.G.L. c. 175, § 113P.