

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW
YORK
TITLE 11. INSURANCE DEPARTMENT
CHAPTER V. RATES AND RATING ORGANIZATIONS
SUBCHAPTER H. NONCOMMERCIAL INSURANCE MERIT RATING PLANS
PART 169. NONCOMMERCIAL MOTOR VEHICLE INSURANCE MERIT RATING PLANS

Text is current through April 30, 2002, and annotations are current through April 1, 2002.

Section 169.0 Preamble.

(a) In order to achieve greater rating equity among noncommercial motor vehicle insureds, merit rating plans were introduced in New York. These plans are systems of rules, varying by company, for imposing insurance rate surcharges and credits, based upon an individual's past accident or violation record. Such plans, under various names, are now in use by virtually all noncommercial motor vehicle insurers in New York, although there is no statutory or regulatory requirement for insurers to utilize such plans.

(b) Chapter 70 of the Laws of 1980, among other things, required the Superintendent of Insurance to report to the Legislature and Governor by February 1, 1981 on the advisability of a uniform merit rating plan. The superintendent's report recommended that a variety of merit rating plans be permitted, subject to legislative and regulatory guidelines. The Legislature then enacted chapter 551 of the Laws of 1981, which added a new subdivision 4 to section 183-a, now section 2334 of the Insurance Law, requiring the superintendent to promulgate a regulation, after a public hearing, applicable to all noncommercial motor vehicle merit rating plans.

(c) The large diversity among merit rating plans, encouraged by the competitive rating statute, appears to be due to independent assessments by insurers of the circumstances which indicate that a driver may be more likely to be involved in future accidents. The differences among these plans illustrate that there is no known "best" plan or even a list of "best" features from the various plans. Insurance Law, section 2334 recognizes the value of competition as a source for innovation and experimentation in the search for "better" merit rating plans. The statute provides that the regulation:

(1) "shall continue to encourage competition among insurers, but shall discourage merit rating plan provisions which may tend to create confusion or misunderstanding among insureds"; and

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(2) "shall establish standards and limitations intended to assure that merit rating plans are reasonable, understandable and objective and are not unfairly discriminatory, inequitable, violative of public policy or otherwise contrary to the best interests of the people of this State."

(d) Insurers' merit rating plans are also subject to section 2335 of the New York Insurance Law, which restricts the circumstances under which policy premiums for any motor vehicle insurance coverage may be increased.

(e) Chapters 9 and 287 of the Laws of 1995 permit insurers to establish multi-tier programs for noncommercial motor vehicles which conform with regulations promulgated by the superintendent. Part 154 of this Title established standards for multi-tier programs in which there is more than one rate level or tier in the same company and there is a complete rating system associated with each rate level or tier. That Part also provided that rules for initial tier placement and movement between tiers shall be mutually exclusive to the extent feasible. Accordingly, it is necessary to amend this Part to provide guidance with respect to the application of merit rating plans with regard to initial tier placement and movement between tiers.

(f) In this Part, the terms noncommercial private passenger automobile insurance policy, as used in section 2334 and noncommercial motor vehicle insurance policy, as used in section 2345 shall have the meaning of a covered policy of insurance as defined in section 3425(a)(1) of the Insurance Law and the term noncommercial motor vehicle insurance policy as used in this Part shall always mean a section 3425 covered policy.

Section 169.1 Procedures.

The following procedures shall be applicable to all merit rating plans which are subject to the provisions of section 2334 of the Insurance Law.

(a) Property damage threshold. An accident that does not result in aggregate damage to property in excess of the dollar amount of the accident reporting threshold of the Department of Motor Vehicles (DMV) shall not result in the assignment of points or any surcharge under the rules of any merit rating plan. All subsequent changes in the property damage reporting threshold to DMV shall be deemed to be incorporated into each insurer's merit rating plan on the same date the change becomes effective for DMV reporting purposes. However, if an insured has two or more accidents involving any property damage during the experience period, a surcharge may be imposed.

(b) Comprehensive coverage and comprehensive claims. Comprehensive premiums may not be surcharged under any merit rating plan. Comprehensive claims may not be used to surcharge any other coverage.

(c) Claims for bodily injury. A surcharge may be imposed for an occurrence involving bodily injury (including a no-fault injury subject to article 51 of the Insurance Law), provided the motor vehicle was in operation and the insured was at fault. The establishment of a residual bodily injury liability reserve shall not in itself imply that the insured was at fault. An additional surcharge may not be imposed for bodily injury, if the accident which resulted in the bodily injury is already surchargeable under subdivision (a) of this section.

(d) Other exceptions and restrictions.

(1) No points or surcharge may be imposed for an accident occurring under the following circumstances:

(i) when the motor vehicle was lawfully parked; or

(ii) when the motor vehicle of the insured or other operator resident in the same household was struck in rear by another motor vehicle, and the insured or other resident operator has not been convicted of a moving traffic violation in connection with the accident; or

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(iii) when the motor vehicle operated by the insured or other operator was struck by a hit-and-run vehicle, if the accident is reported to the proper authority within 24 hours by the insured or resident operator; or

(iv) when the insured or other resident in the insured's household operates a vehicle for hire or a motor vehicle other than a noncommercial motor vehicle, and the accident occurred while in the course of employment and said accident did not result in a conviction for a moving traffic violation; or

(v) when the insured has had an accident while operating, as an employee, a commercial motor vehicle in the course of employment and in the discharge of the employee's duties at the time of the accident, unless the accident is determined to have been caused by the intentional action or gross

negligence of the insured. For purposes of this rule only, the term gross negligence shall not mean the insured's failure to refuse to drive or operate a commercial motor vehicle which has a defective condition that is known to the insured, provided the insured had reported such defective condition to the insured's immediate supervisor or employer.

(2) An insured may not be charged in two or more ways for the same series of accidents and/or violations. However, as specified in Part 154 of this Title, an insurer may have a multi-tier rating program, each component of which shall meet the standards set forth in this Part. Movement from tier to tier shall not be considered merit rating for the purpose of this Part.

(e) Upper limits to surcharges. Under additive type plans, the maximum surcharge that can be added to an insured's premium as a result of merit rating is three times the applicable total limits premium for the base (adult) class for the liability coverages (including personal injury protection), and three times the applicable base (adult) premium for collision coverage. Under multiplicative type plans, the maximum surcharge that can be added to an insured's premium as a result of merit rating is two times the otherwise applicable premium for liability (including personal injury protection) and collision coverages. The above rules should be complied with prior to any expense flattening.

(f) Multicar surcharge rule. In a multicar risk, i.e. , where more than one motor vehicle is insured under a policy, the insurer may allocate the surcharge among any or all of the motor vehicles, but the aggregate surcharge shall be no greater than the amount of surcharge that would have been generated if only one motor vehicle were insured under the policy.

(g) Minimum percentage of reimbursement required for exemption from surcharge. An insured may not be surcharged for an incident for which that insured or the insurer has received reimbursement or a judgment, equal to one third or more of the value of the insured's property damage claim. For the purposes of this Part, the value of the property damage claim is defined as the lesser of the adverse carrier's or the insured's estimate.

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(h) Refund of surcharge.

(1) All merit rating plans must contain a provision, applicable to present and former insureds, to refund the additional portion of the premium representing a merit rating surcharge in any of the following circumstances:

(i) it is subsequently established that the accident for which a surcharge was applied falls under one of the exceptions enumerated in the insurer's merit plan;

(ii) the conviction for a chargeable violation or traffic infraction is ultimately reversed;

(iii) a surcharge was levied through mistake, carelessness, misinformation or other error;

(iv) the insurer has established a reserve, but no claim was submitted for a period of three years after the date of the incident, or the statute of limitations has run and no suit has been filed.

(2) All such refunds shall be the portion of the premium due to the surcharge for all policy periods since the inception of the surcharge. An insurer may refund the amount of the surcharge or credit the insured's policy. However, the insured shall have the option of receiving a dollar refund in lieu of a credit.

(i) Providing noncommercial motor vehicle insureds with clear notice of premium surcharges under merit rating plans. Where a policy has been surcharged under a merit rating plan, the insurer shall state prominently, either on the declarations page, on the premium bill, or on a notice accompanying the declarations page or premium bill, the following, or its substantive equivalent:

"YOUR PREMIUM REFLECTS A SURCHARGE AND, THEREFORE, IS HIGHER THAN IT OTHERWISE WOULD BE BECAUSE, DURING THE MEASURING EXPERIENCE PERIOD WHICH APPLIED TO YOUR INSURANCE, YOU HAD ONE OR MORE CHARGEABLE ACCIDENTS OR CHARGEABLE TRAFFIC CONVICTIONS UNDER OUR MERIT RATING PLAN. THE ATTACHED DESCRIPTION OF OUR MERIT RATING PLAN INCLUDES A LIST OF EVENTS FOR WHICH WE MAY SURCHARGE YOU AND THE CIRCUMSTANCES UNDER WHICH SURCHARGES MAY BE REMOVED OR REFUNDED. IF YOU HAVE ANY QUESTIONS, YOU MAY (WISH TO CONSULT YOUR AGENT OR BROKER) [FN1] OR (CALL US AT COMPANY TELEPHONE NO. _____) [FN2] "

(j) Rate surcharges to be expressed in dollar amounts. Where a policy has been surcharged under a merit rating plan, the insurer shall state prominently, either on the premium bill, on a notice accompanying the premium bill, or on the declarations page, the total dollar amount of such surcharge. This disclosure shall be made:

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- (1) at the inception of each policy period;
- (2) at the time of any premium change during the policy period, where the dollar amount of the surcharge is changed; and
- (3) in no event less than once a year.

(k) Providing noncommercial motor vehicle insureds with notice of chargeable accident dates and conviction dates of chargeable violations. For all policies issued or renewed on or after July 1, 1992 (or, at the insurer's option, an earlier date), where a policy has been surcharged under a merit rating plan, the insurer shall state prominently, as part of the disclosure required by subdivision (j) of this section:

- (1) the date on which each chargeable accident occurred; and
- (2) the conviction date of each chargeable violation.

(l) Attachment of any applicable merit rating plan. All companies writing noncommercial motor vehicle liability or physical damage motor vehicle insurance are required to include, with the rating information form that accompanies all new and renewal policies, a merit rating description that clearly specifies the essential elements of the rules and classifications of the merit rating plan, including a statement informing insureds that if they receive any reimbursement or judgment, such should be reported to the insurer. This description should be clear enough so that an insured can be able to determine his/her merit rating classification, the surcharge level associated with this classification, the duration of the surcharge, the circumstances under which surcharges will be removed, etc.

(m) Exception from the above rules. The superintendent may exempt a merit rating plan from the requirement of meeting one or more of the above standards if the superintendent determines that the plan contains innovative features of sufficient merit, and that plan is, on balance, in the public interest.

Section 169.2 [Repealed]