



**STATE OF NEW YORK  
INSURANCE DEPARTMENT**  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

**NOTE: WITHDRAWN EFFECTIVE AUGUST 14, 2003**

**Supplement No. 1 to Circular  
Letter No. 21 (2001)  
September 20, 2001**

**TO: All Insurers Licensed to Write Private Passenger Automobile Insurance in New York State**

**RE: Section 2349 (Multi-tiering) and Sunset of Portions of Section 3425**

**STATUTORY REFERENCES: Sections 2349 and 3425 of the Insurance Law**

Recently issued Circular Letter No. 21, dated August 8, 2001, provided guidance to insurers in meeting their obligations under the law subsequent to the expiration on August 2, 2001 of certain provisions of New York Insurance Law (NYIL) Section 3425 and Article 23, relating to covered policies of "automobile insurance", as defined in §3425(a)(1). Since §3425(f) has expired while §2349(b) has not, insurers have requested additional guidance with respect to the relationship between the expiration of §3425(f) and the provisions of §2349(b) and Regulation 150 (11 NYCRR 154.3), specifically regarding the "three-percent" and "two-for-one" rules in connection with private passenger motor vehicle multi-tiering programs.

As stated in Circular Letter No. 21 (2001), the provisions in question expired only in connection with new policies issued on or after August 2, 2001. Further, §3425(f) remains applicable to policies issued on or before August 1, 2001. The affected policies cover motor vehicles used primarily for non-business purposes, other than policies issued by the New York Automobile Insurance Plan pursuant to NYIL Article 53.

Regulation 150, in §154.3, clarifies the relationship between §3425(f) and §2349(b). Section 154.3(b) states that the three-percent limit is in addition to the two-percent limit. Section 154.3(e) provides that the two-for-one new business credit in §3425(f)(2) shall apply to the two-percent and three-percent limitations as follows: for every two new policies written, an insurer may either nonrenew one additional policy in excess of the two-percent limitation or may uptier one additional policy in excess of the three percent limitation. Unlike the three-percent limit, which was in addition to the two-percent limit, the uptiering two-for-one rule actually served to limit the two-for-one rule for nonrenewals and conditional renewals.

The Superintendent has determined that, consistent with the Legislature's intent in enacting §2349, an insurer may apply the two-for-one rule to implement a nonrenewal or conditional renewal only for business written on or before August 1, 2001, while it may apply the rule to implement an uptier increase for any business, regardless of when it was originally written. Therefore:

1. An insurer may, each year, nonrenew or conditionally renew two percent of its business written on or before August 1, 2001 based upon the total number of the insurer's covered policies in force at last year's-end in each of the insurer's rating territories in use in this state, and may uptier three percent of all of its business, based upon the total number of covered policies of the insurer in force at last year's-end in each of the insurer's rating territories in use in this state.

2. An insurer may either nonrenew or conditionally renew one additional policy written in a territory on or before August 1, 2001, in excess of the two-percent limit, for every two new automobile policies written in that territory, or may uptier one additional policy in a territory, regardless of when written, in excess of the three-percent limit, for every two

new automobile policies written in that territory.

Please acknowledge receipt of this letter, and address any questions or problems concerning this subject, to Alan Goren, Associate Insurance Examiner, Property Bureau, at the above address, by e-mail at [agoren@ins.state.ny.us](mailto:agoren@ins.state.ny.us), or at 212-480-5598.

Very truly yours,

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Assistant Deputy Superintendent  
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