

211 CMR: DIVISION OF INSURANCE

211 CMR 88.00: PROCEDURES FOR THE APPEAL OF SAFEDRIVER INSURANCE PLAN (SDIP) MOTOR VEHICLE ACCIDENT SURCHARGES AND FOR CONDUCT OF SDIP MOTOR VEHICLE ACCIDENT SURCHARGE HEARINGS

Section

- 88.01: Authority, Purpose and Scope
- 88.02: Definitions
- 88.03: Initiation of Surcharge Appeal Hearings
- 88.04: Time Limit for Filing a Surcharge Appeal
- 88.05: Service and Filing
- 88.06: Initial Review of Appeals
- 88.07: Surcharge Remains Active Pending Appeal
- 88.08: Notice of Hearing
- 88.09: Conduct of the Hearing
- 88.10: The Record
- 88.11: Special Requests
- 88.12: Conflicts on Interest
- 88.13: Actions, Orders, Findings and Decisions
- 88.14: Rehearing
- 88.15: Superior Court Appeal Procedure
- 88.16: Non-English Speaking Parties
- 88.17: Forms
- 88.18: Severability

88.01: Authority, Purpose and Scope

211 CMR 88.00 is issued according to the authority granted to the Board Of Appeal On Motor Vehicle Liability Policies and Bonds by M.G.L. c. 26, § 8A and c. 175, § 113P and establishes the procedures that govern the filing and review of Safe Driver Insurance Plan (SDIP) Surcharge Appeals, and the conduct of SDIP Surcharge Hearings before the Board.

88.02: Definitions

As used in 211 CMR 88.00, the following words and phrases shall mean:

Appeal a completed Surcharge Notice/Surcharge Appeal Form filed by a Policyholder or Involved Operator who believes himself or her self wronged by a determination of an insurer as to the application of an SDIP surcharge. Such appeal must be submitted within 30 days after that determination is received and must be accompanied by the required filing fee.

Appellant a Policyholder or Involved Operator filing an SDIP Surcharge Appeal with the Board according to the procedures established by 211 CMR 88.00.

Authorized Representative any person authorized by an appellant or insurer to represent him or her in an SDIP Surcharge Appeal, provided that such person confirm their authority by presenting written permission.

Board The Board of Appeal on Motor Vehicle Liability Policies and Bonds authorized by the Commissioner of Insurance to conduct SDIP Surcharge Hearings according to the provisions of M.G.L. c. 26, § 8A and c. 175, § 113P.

Commissioner The Commissioner of Insurance appointed by the Governor according to M.G.L. c. 26, § 6.

Hearing Officer A person designated by the Board to act upon appeals, conduct hearings and render findings, rulings, orders, and decisions with respect to those appeals and hearings.

Insured. Any person covered by the insurance policy.

Insurer. Any corporation, association, partnership, group or individual authorized to write motor vehicle insurance in the Commonwealth of Massachusetts.

88.02: continued

Involved Operator The Operator of a motor vehicle involved in a surchargeable incident.

Motor Vehicle Insurance Merit Rating Board The Board created to gather and disseminate operator driving history records, by M.G.L. c. 6, § 183.

Party the Policyholder, Involved Operator or insurer whose legal rights, duties or privileges are being determined in a Surcharge Appeal hearing before the Board.

Policyholder The person to whom an insurance policy is issued.

Record any evidence, including but not limited to, oral testimony, magnetic tape(s), exhibits, records, accident reports, photographs or other documents received in the form of the original document, copies of entire documents, excerpts of documents, or documents incorporated by reference, submitted for the hearing.

Standards of Fault The rules established by the Board pursuant and set forth in 211 CMR 74.00 that identify situations in which fault is presumed to be more than 50% for the purpose of applying SDIP Surcharges.

Statement in Lieu of a Personal Appearance any written statement, identifying itself as a statement in lieu of a personal appearance, submitted by the appellant, waiving an appearance at his or her surcharge hearing. This statement must provide the basis of the Surcharge Appeal, and must include the date of the hearing and the appellant's signature, signed under the pains and penalties of perjury.

Surcharge An amount added to the policyholder's next premium.

Surcharge Appeal Form (provided on the form approved by the Commissioner of Insurance) required to be completed and filed as part of the appeal. This form is located on the reverse side of the surcharge notice.

Surcharge Notice the notice (provided on the form approved by the Commissioner of Insurance) to the Policyholder and/or Involved Operator issued by the insurer stating that the operator has been found more than 50% at fault for an accident subject to the plan.

### 88.03: Initiation of Surcharge Appeal Hearings

Any Policyholder or Involved Operator who believes he or she is wronged by a determination of an insurer as to the application of a Safe Driver Insurance Plan Surcharge may file a Surcharge Appeal with the Board. Such appeal shall be accompanied by the required filing fee.

### 88.04: Time Limit for Filing a Surcharge Appeal

The Policyholder or Involved Operator has 30 days from the receipt of a Surcharge Notice/Surcharge Appeal Form to appeal. Receipt is determined by the date postmarked on the envelope in which the Surcharge Notice was mailed. The Surcharge Appeal must be submitted to and received by the Board, at the Boston, Massachusetts office, or at such place as the Board may designate.

(1) Manner of Filing. Surcharge Appeals submitted in the following manner shall be deemed to be filed as listed below:

- (a) Hand Delivery during Regular Business Hours. Hand delivery during regular business hours, 8:45 A.M. to 5:00 P.M. shall be treated as filed on the day delivered.
- (b) Hand Delivery during Non-business Hours. Hand delivery during non-business hours shall be treated as filed on the next regular business day (excluding Saturdays, Sundays and legal holidays).
- (c) Mailing. Delivery by placing in the U.S. mail, properly addressed and postage paid, shall be treated as filed on the date postmarked.

## 211 CMR: DIVISION OF INSURANCE

### 88.04: continued

(2) Computation of Time. The calculation of any time period referred to in 211 CMR 88.00 shall begin with the first day following the act which starts the running of the time period and shall include all subsequent days until the last day. The last day of the time period is to be included unless it is a Saturday, Sunday or legal holiday, in which case the last day of the period shall be deemed to be the next following business day.

(3) Extension of Time. A party must submit a written request for extension of time before the end of the original or previously extended time period. The Board, for good cause shown, may extend a filing time limit set or allowed by 211 CMR 88.00. The filing of such a request shall stop the running of the time period requested to be extended until the Board informs the appellant of its decision. 211 CMR 88.04 does not apply to any limitation of time set by the General Laws of the Commonwealth of Massachusetts.

### 88.05: Service and Filing

(1) Service. Service of all documents and evidence relating to Surcharge Appeal hearings shall be by personal service or first-class mail, postage pre-paid and properly addressed. All documents and evidence filed with the Board should be identified with the name and address of the filing party and the name and license number of the appellant.

(2) Place of Filing. All appeals, pleadings, documents or papers relating to matters requiring action by the Board shall be filed at the office of the Board of Appeal, in Boston, Massachusetts, or such other place as the Board may designate. All papers filed with the Board become part of the Board's record and are not returnable.

### 88.06: Initial Review Of Appeals

Upon receipt of an appeal the Board shall make an initial review of the appeal. The Board may make one of the following determinations.

- (1) The Appeal Is Incomplete. An appeal shall be deemed incomplete if:
- The filing fee is in an incorrect amount or has not been received by the Board.
  - The Surcharge Notice/Surcharge Appeal Form has not been received by the Board.
  - The Surcharge Appeal Form is not completed by the appellant.
  - The appeal is in such a condition (*i.e.* illegible, damaged) that it cannot be processed.

Upon determining that an appeal is incomplete the Board shall return the appeal to the appellant for completion. The appellant must resubmit the Surcharge Notice/Surcharge Appeal Form within 30 days.

- (2) The Appeal May Be Allowed. The appeal may be allowed if a determination favorable to the appellant can be reached following a(n):

(a) Administrative Review - the Board may allow a prehearing administrative initial review may be provided for winter weather-related accidents in any year in which the Commonwealth of Massachusetts experiences a particularly severe winter and corresponding hazardous driving conditions. The Board will make an initial record review of these appeals will be made by the Board. The appeal will be allowed if the record provides sufficient information to determine that the appellant was not more than 50% at fault for the accident. Appeals that are not allowed will proceed to a documentary review or will be scheduled for a hearing.

(b) Documentary Review - the Board may allow a prehearing administrative initial review to resolve those appeals that can be allowed based upon document submissions. The Board will notify Insurers of the appeals pending for their companies and will request copies of the documents or other information that resulted in their decision to issue the surcharge. The insurer may choose not to submit the documents and request a hearing be scheduled. The Board will review these appeals based upon the documents submitted by the insurer, the appeal form and information filed by the appellant. The Board will allow the appeal if the record provides sufficient information to determine that the appellant is not more than 50% at fault for the accident at issue. Appeals that are not allowed will be scheduled for a hearing.

88.06: continued

Upon determining that the appellant is not more than 50% at fault, the Board will issue a decision to vacate the surcharge to the appellant, the insurer and Merit Rating Board.

- (3) The Appeal will be Scheduled for a Hearing. The Board will schedule an appeal for a hearing after if an initial review has not resulted in a decision favorable to the appellant.

88.07: Surcharge Remains Active Pending Appeal

Neither the filing of an appeal, the request for a hearing, any motion concerning the appeal, any appeal from a decision of the Board, nor any court proceeding will stop the assessment or collection of a surcharge until a final determination by the Board or a court of competent jurisdiction to vacate the surcharge.

88.08: Notice of Hearing

The Board shall provide the parties with at least ten days written notice of the hearing. The notice shall be deemed received three days after deposit in the U.S. mail. The notice of the hearing shall include the date, time and place of the hearing and shall provide sufficient notice of the issues involved so that the parties may have a reasonable opportunity to prepare and present evidence and arguments.

88.09: Conduct of The Hearing

- (1) General. Hearings shall be as informal as may be reasonable and appropriate under the circumstances.

- (2) Conduct of Persons Present. All parties, counsel, witnesses and other persons present at the hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the Courts of the Commonwealth. Where such standards are not observed, the Hearing Officer may take such action as he or she deems appropriate to maintain order at the hearing, including the exclusion of any person from the hearing. If the person so excluded is a party or his or her agent, the Hearing Officer may decide against such party with prejudice.

- (3) Burden of Proof. The presumptions raised as to an operator being more than 50% at fault, in accordance with 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.

- (4) Hearing Docket. The Board shall maintain a hearing docket containing all documents relating to each hearing.

- (5) Statement in Lieu of Personal Appearance. The appellant may elect not to appear at a hearing and submit a statement and any relevant documents to the Board. The statement must be written, signed by the appellant and clearly indicate that it is a statement submitted in lieu of a personal appearance. The statement shall be signed under the pains and penalties of perjury, but need not be notarized. Submitting a statement in lieu of a personal appearance does not relieve the appellant from supplying any and all documents supporting their allegations or defenses. The Board will not grant an additional hearing if this option is elected. The statement must be submitted to the Boston, Massachusetts office of the Board three business days prior to the hearing date. Statements arriving after this time will result in a default being entered.

- (6) Hearing Officer's Duties and Powers at Hearings. The Hearing Officer shall have the duty to conduct a fair hearing to protect the rights of all parties, and to reach a fair, independent and impartial decision based upon the issues and evidence presented at the hearing according to the law. In addition, the hearing officer shall have duties and powers, including, but not limited to the following:

88.09: continued

- (a) to administer the oath or affirmation to anyone testifying at the hearing;
- (b) to ensure that all parties have a full opportunity to present their claims orally, or in writing;
- (c) to receive, rule on, exclude or limit evidence;
- (d) to exclude or limit cumulative or unduly repetitious evidence or testimony;
- (e) to regulate the presentation of the evidence and the participation of the parties, including requiring that all testimony and questions shall be directed to the Hearing Officer, in order to maintain a non-adversarial atmosphere and ensure an adequate and comprehensible record of the proceedings;
- (f) to utilize his or her experience, technical competence and specialized knowledge in evaluating and weighing the evidence presented;
- (g) to examine witnesses;
- (h) to change the date, time or place of the hearing at his or her discretion;
- (i) to hold the hearing open to permit either party to produce additional evidence, witnesses or other materials, at the Hearing Officer's discretion;
- (j) to rule on, or take under advisement, any requests that may be made.

(7) Rights and Duties of the Parties.

(a) Appellant's Rights. The appellant at his or her option, may present his or her case, or may be assisted by an authorized representative. The appellant is fully responsible for paying the cost of representation, if any. The appellant, or his or her authorized representative, shall have the following rights:

- 1. to present and establish all relevant facts and circumstances by oral testimony, documentary evidence or other evidence;
- 2. to present witnesses;
- 3. to introduce exhibits;
- 4. to advance pertinent arguments without undue interference;
- 5. to question any testimony including an opportunity to examine the case record;
- 6. to submit rebuttal evidence.

(b) Insurer's Rights. The insurer may present its own case, or may send an authorized representative and:

- 1. is responsible for submitting at the hearing all documented information on which any determination at issue was based;
- 2. shall introduce into the hearing from the case record, only the material which pertains to the issues;
- 3. shall ensure that the case record is present at the hearing and that the appellant has adequate opportunity to examine it at the hearing;
- 4. may present and establish all relevant facts and circumstances by oral testimony, documentary evidence or other evidence;
- 5. may advance pertinent arguments without undue interference;
- 6. may question testimony and shall have an opportunity to examine the evidence.

(8) Documentary Evidence. Any documents the parties wish to be considered by the Board must be submitted in the form of originals or copies. These documents become a part of the record and can not be returned. The parties are responsible for associated costs.

(9) Correction of the Standard of Fault Assigned by the Insurer. The Board may, on its own motion, based upon information available at the hearing, change an incorrectly assigned standard of fault to the proper standard of fault. An assignment of an incorrect standard of fault listed on the appellant's Surcharge Notice shall not constitute grounds for a decision to vacate the surcharge or grounds for a continuance of the hearing, so long as the facts of the accident indicated that it is a surchargeable incident, the notice accurately identifies the date of the accident and indicates that the issue on appeal is whether the appellant is more than 50% at fault for the accident.

211 CMR: DIVISION OF INSURANCE

88.09: continued

(10) Default by Appellant. The Board shall issue a default to any appellant who fails to appear or submit a statement in lieu of a personal appearance at the hearing as provided by these rules. The Board may, for good cause shown, set aside the entry of default. If the record indicates a failure of the appellant to file papers required by 211 CMR 88.00, respond to notices or otherwise indicate an intention to continue with an appeal, the Board may issue a default. Written requests for a rescheduled hearing must be filed with the Board within ten days of the date of the Board's notice of default to the appellant.

(11) Dismissal of Surcharge for Failure of the Insurer to Go Forward. The Board may enter a dismissal in any appeal when an insurer fails to go forward with the case. If the record indicates a failure of the insurer to file papers required by 211 CMR 88.00, respond to notices or otherwise indicate an intention to continue with an appeal, the Board may issue a dismissal.

(12) Non-appearance by the Insurer, without proper notice. If due to no fault of the insurer, the Insurer is not notified of the proceedings and is not present, the appellant will be given the option to:

- (a) postpone the hearing until the insurer can also be present and the appellant will, at that later date, have the opportunity to view and dispute any and all materials presented by the insurer;
- (b) to continue with the hearing process. If the appellant elects this option, he or she will be advised that the information in the insurer's record will be requested and considered in making the final decision and that the appellant, by making this election, will have waived the right to view and dispute the information presented by the insurer.

(13) Postponements. For good cause shown, a hearing may be postponed at the discretion of the Board. All requests for postponements shall be made in writing prior to the hearing. All parties or their authorized representatives shall be notified as to the time, date and place of the rescheduled hearing. If an appellant fails to appear at the time and place of the rescheduled hearing, the Board may dismiss the appeal with prejudice for failure to go forward.

(14) Representation.

(a) Appearance. Any party may appear on his or her own behalf and/or may be accompanied, represented, or advised by an authorized representative. The authorization must be in writing. In the absence of, or due to the inability of the appellant to testify, the representative may offer testimony on the appellant's behalf. In the case of an insurer, a representative of the insurer shall appear at each hearing unless otherwise prescribed by 211 CMR 88.00.

(b) Powers. An authorized representative is deemed to exercise on the party's behalf any of the rights and powers vested in that party by 211 CMR 88.00.

(15) Insurer's Submission of Documents in Lieu of an Appearance. The Board shall have the discretion to allow documents or other evidence to be submitted in lieu of an appearance by an insurer when the following procedures are followed:

In the event an insurer has four or fewer appeal hearings scheduled on a given date, the insurer may, at least seven days prior to the hearings, request in writing authorization for files to be submitted in lieu of appearance for such hearings. If authorization is allowed by the Board, the Board will inform the insurer of its authorization, the insurer will then submit files to the Board, with copies of all accident and police reports, photographs and witness statements, at least five days prior to the hearings. Submitting the files in lieu of a personal appearance does not relieve the insurer from supplying any and all documents supporting their imposition of the surcharge.

88.09: continued

(16) Ex Parte Communications. No party or other person directly or indirectly involved in a Surcharge Appeal hearing shall submit to the Hearing Officer or any Board employee involved in the decision-making process, any evidence, argument, analysis or advice, whether written or oral, regarding any matter at issue in a Surcharge Appeal hearing, unless such submission is part of the record or made in the presence of all parties. This provision does not apply to consultation among Board members concerning the Board's internal administrative functions or procedures. If any ex parte communication is directed to any person in violation of this provision, that person shall immediately inform the Board of the substance and circumstances of the communication. If the Board determines that a party or his or her agent has violated 211 CMR 88.09(16), the Board may exclude such party from the hearing or decide against that party with prejudice. If the Board determines that a person not a party has violated 211 CMR 88.09(16), the Board may exclude that person from the hearing.

When due to unforeseen circumstances an appellant chooses to present the facts of the appeal to a Hearing Officer in the absence of the insurer, at a Surcharge Appeal Hearing, the appellant shall have waived the right to view and dispute the information presented by the insurer. Under these circumstances this communication will not be considered *ex parte*.

(17) Evidence. The Hearing Officer need not observe the rules of evidence observed by the Courts of the United States or of this Commonwealth of Massachusetts, but shall observe the rules of privilege recognized by Massachusetts law. Evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Hearing Officer may exclude testimony or evidence which he or she determines to be unduly repetitious or to have an unreasonably dilatory effect upon the hearing process. All records, investigative reports and documents of which the Hearing Officer desires to avail himself or herself of in making a decision, shall be offered and made a part of the record in the proceeding. Documentary evidence may be received in evidence in the form of originals, copies or excerpts, or by incorporation by reference.

(18) Additional Evidence. At any stage of the hearing, the Hearing Officer may call for further evidence on any issue, to be presented by the party or parties concerned, either at the hearing or within a time specified by the Hearing Officer.

(19) Objections and Exceptions to Rulings. Formal exceptions to rulings on evidence and procedure are unnecessary. It is sufficient that a party, at the time that a ruling of the Board is made or sought, makes known to the Hearing Officer the action which he or she desires taken or his or her objections to such action and grounds for the exception.

(20) Motions. The Hearing Officer may make rulings regarding the admissibility of evidence or any other matter which may arise during the hearing. Any party making application to the Hearing Officer for a ruling shall do so by motion which shall state the ruling sought and the grounds for the motion. The Hearing Officer may require that any motion be in writing. The Hearing Officer may, in his or her discretion hear oral argument on a motion prior to making a decision.

(21) Delay of Surcharge Appeal Hearings. Except as otherwise directed by the Board, the filing of a motion, either prior to or during any Surcharge Appeal hearing, and any action thereon shall not delay the conduct of such proceeding.

(22) Objections To Rulings. At the time that the Hearing Officer makes a ruling, any party may make known an objection to the ruling and the grounds for the objection.

(23) Offers of Proof. Any offer of proof made in connection with an objection to a ruling by the Hearing Officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which the party making such offer contends would be adduced by the testimony; and if the rejected or excluded evidence consists of documents or records, or of references to documents or records, a copy of such documents records, or references shall be marked for identification and shall constitute the offer of proof.

88.09: continued

(24) Official Notice. The Hearing Officer may take official notice of any fact which may be judicially noticed by the courts of this Commonwealth, and in addition, may take official notice of general, technical or scientific facts within his or her specialized knowledge; provided that the Hearing Officer shall notify all parties of the material so noticed, and provided further that any party, upon timely request, is afforded an opportunity to contest the facts so noticed. The Hearing Officer may utilize his or her technical experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.

(25) Oral Testimony. Oral testimony shall be given under oath or affirmation.

(26) Continuances. A hearing may be continued at the discretion of the Hearing Officer. All parties and/or their authorized representatives, shall be notified as to the time, date and place of the continued hearing. Excessive continuances without good cause may result in a dismissal.

88.10: The Record

(1) Record. All documents and other evidence shall become part of the record. The Board shall make available an official record, which shall include testimony and exhibits documents and other evidence. The record shall also contain all orders made by the Board during the proceedings, all facts officially noticed, all pleadings and motions of the parties and the Board's final decision. The record may further contain tape recordings of the proceedings, but the Board need not arrange to transcribe sound recordings. A party may make a written request for a copy of the documentary record and/or the sound recording. The requesting party shall be responsible for the cost of such copies. The record shall be the exclusive source of the decision and shall be open for inspection by any party or his or her authorized representative to the hearing, during regular business hours.

(2) The Taped Record. All testimony at the hearing shall be recorded electronically. Only the Board may electronically record the proceedings, to ensure an accurate record. When a statement is submitted in lieu of a personal appearance, no electronic recording will be made.

(3) Tape Disposal. Electronic recordings will be held for a minimum of four months from the date of the Surcharge Appeal decision by the Board. In the case of further appeal, provided the Board is properly notified of the appeal, the recordings will be held for a minimum of four months from the date of final disposition of the case.

88.11: Special Requests

(1) Withdrawals. An appellant may, at any time, withdraw his or her request for a Surcharge Appeal. The withdrawal must be in writing and signed by the appellant.

(2) Emergency Scheduling. The Board, may at its own discretion or by the request of a party, for good cause shown, may schedule a hearing on an accelerated basis.

88.12: Conflicts of Interest

No Hearing Officer who has a direct or indirect interest, personal involvement or bias, in a Surcharge Appeal hearing, shall conduct a hearing in said matter, nor shall he or she participate in the decision-making process. In the event of a conflict, the Hearing Officer shall recuse himself or herself and the hearing will be transferred to another Hearing Officer or will be rescheduled with another Hearing Officer.

88.13: Actions, Orders, Findings and Decisions

(1) General. The Board shall, upon completion of the hearing, render a written decision as promptly as administratively feasible and shall send it to all parties.

## 88.13: continued

- (2) Findings.
- (a) Vacate - Allowance of Appeal. If the Board finds, either after initial review or after a hearing, that the insurer's application of a surcharge was not in accordance with the Standards of Fault promulgated by the Board and the provisions of M.G.L. c. 175, § 113P, it shall allow the appeal and order the insurer to vacate the surcharge and delete it from any premium charged. The Board shall notify the appellant, the Motor Vehicle Insurance Merit Rating Board, and the insurer of its decision.
- (b) Uphold - Denial After Hearing. If the Board finds after a hearing, that the insurer's application of a surcharge was in accordance with the Standards of Fault promulgated by the Board and the provision of M.G.L. c. 175, § 113P, it shall order the insurer to uphold the surcharge and to continue to apply the surcharge to any premium charged. The Boards shall notify the appellant and the insurer of its decision.
- (3) Forms Of Decisions. All actions, orders, findings and decisions shall be made in writing by memoranda filed in the office of the Board. Every decision shall be accompanied by a statement of the reasons therefor, including determination of each issue of fact or law necessary to the decision.
- (4) Notice of Decision and Right to Appeal. The Board shall distribute to each party the notice of decision, which shall contain:
- (a) a statement advising all parties of their right to appeal an SDIP surcharge decision to the Superior Court, or in certain cases, to the Municipal Court of the City of Boston.
- (b) a statement advising all parties of the time period within which such right to appeal must be exercised.
- (c) a statement advising all parties of the procedures for making the appeal pursuant to M.G.L. c. 175, § 113P.

88.14: Rehearing

Any party applying to the Board for a rehearing shall do so by written motion stating the grounds for the request. Motions for rehearing must be filed within thirty days from the date of the hearing. Incorporation of the record of the previous hearing shall be permitted when the rehearing is for purposes of introducing new evidence not available at the time of the original hearing. Material presented at the prior hearing may be considered during the rehearing for the issues of relevance and credibility.

88.15: Superior Court Appeal Procedure

The appellant must:

- (1) Obtain a certified copy of the Finding and Order from the Board. A fee is required for the certification.
- (2) File the Petition for Judicial Review (forms may be obtained in the Superior Court Clerk's Office), the certified copy of the original complaint (the original Surcharge Notice/Surcharge Appeal Form) and the finding and order (the Board's decision) in the Superior Court in the county in which the appellant resides, or Suffolk County. This must be filed within thirty days of receipt of the finding and order (the Board's decision). A filing fee will be required by the Superior Court.
- (3) Serve a copy of the Petition for Judicial Review filed with the Superior Court upon the Board of Appeal and the Office of the Attorney General.

88.16: Non-English Speaking Parties

All hearings are conducted in English. If a party cannot communicate effectively in English, the hearing shall be postponed until the party, at their own expense (if any), can provide someone who can communicate effectively in both English and the language of the non-English speaking party.

211 CMR: DIVISION OF INSURANCE

88.17: Forms

All forms used in connection with Merit Rating surcharges, appeals, and hearings thereon shall be approved by the Board.

88.18: Severability

If any section or portion of a section of 211 CMR 88.00 or the applicability thereof to any person, entity, or circumstance is held invalid by a court of competent jurisdiction, the remainder of 211 CMR 88.00 or the applicability of such provision to other persons, entities or circumstances, shall not be affected thereby.

REGULATORY AUTHORITY

211 CMR 88.00: M.G.L. c. 26, § 8A; c. 175, § 113P.